(4)

No. 90-285

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

LITTON FINANCIAL PRINTING DIVISION, A DIVISION OF LITTON BUSINESS SYSTEMS, INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 14, 1990
CERTIORARI GRANTED NOVEMBER 13, 1990

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NATIONAL LABOR RELATIONS BOARD

Litton Financial Printing Division, etc.
and
Printing Specialties and Paper Products Union, etc.

Case No. 32-CA-3160

November 6, 1987

DECISION AND ORDER

The Decision and Order of the National Labor Relations Board has already been reproduced in the Petition for Writ of Certiorari, and can be found in the Appendix to the petition at B1-B28.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

National Labor Relations Board,
Petitioner,
Printing Specialties District Council, etc.,
Petitioner-Intervenor,
v.
Litton Financial Printing Division, etc.,
Respondent.

Printing Specialties District Council, etc.,
Petitioner,
v.
National Labor Relations Board,
Respondent.

Cases Nos. 88-6065 and 88-7079

January 16, 1990

OPINION

The Opinion of the United States Court of Appeals for the Ninth Circuit has already been reproduced in the Petition for Writ of Certiorari, and can be found in the appendix to the petition at A1-A22.

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

CHARGE AGAINST EMPLOYER

[Printers Note: Form instructions omitted in printing.]

Case No. 32-CA-3160
Date Filed October 27, 1980

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT
   a. Name of Employer
      LITTON FINANCIAL PRINTING
   b. Number of Workers Employed
      45 in Unit
   c. Address of Establishment
      2260 De La Cruz Blvd, Santa Clara, CA 95050
   d. Employer Representative to Contact
      Mary Arnold
   e. Phone No.
      (408) 727-3262
   f. Type of Establishment
      Printing
   g. Identify Principal Product or Service
      Checks
   h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge

Within the last six months preceding the filing of this charge, the above-named employer has refused to meet with the certified bargaining representative and/to process a grievance regarding the layoffs of various employees.

Relief is sought by way of a reinstatement order and back pay until the Company completes its bargaining obligation.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge
Printing Specialties & Paper Products Unions District Council No. 1

4a. Address
2267 Telegraph Avenue, Oakland, California 94612

4b. Telephone No.
(415) 451-0309

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit
International Printing and Graphic Communications Union

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

DAVID A. ROSENFELD

By /s/ DAVID A. ROSENFELD

Title _____

VAN BOURG, ALLEN,
WEINBERG & ROGER

Address 875 Battery Street
San Francisco, CA 94111

Telephone number (415) 864-4000

Date October 23, 1980

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD
REGION 32

LITTON FINANCIAL PRINTING DIVISION,
A DIVISION OF LITTON BUSINESS
SYSTEMS, INC.
and
PRINTING SPECIALTIES AND
PAPER PRODUCTS UNION,
DISTRICT COUNCIL NO. 1,
INTERNATIONAL PRINTING AND
GRAPHIC COMMUNICATIONS UNION

Case 32-CA-3160

COMPLAINT AND NOTICE OF HEARING

It having been charged by Printing Specialties and Paper Products Union, District Council No. 1, International Printing and Graphic Communications Union, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby

issues this Complaint and Notice of Hearing and alleges as follows:

1.

The charge was filed by the Union on October 27, 1980, and a copy thereof was served on Respondent by certified mail on or about the same date.

2.

(a) At all times material herein, Respondent, a New York corporation with an office and place of business in Santa Clara, California, has been engaged in the wholesale printing and distribution of financial documents.

(b) During the past twelve months, Respondent, in the course and conduct of its business operations, purchased and received goods or services valued in excess of $50,000 directly from suppliers located outside the State of California.

(c) During the past twelve months, Respondent, in the course and conduct of its business operations, sold and shipped goods or services valued in excess of $50,000 directly to customers located outside the State of California.

3.

Respondent is now, and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4.

The Union is now, and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

5.

At all times material herein, Mary Arnold occupied the position of Respondent's Plant Manager and is now, and has been at all times material herein, a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

6.

The following-described employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All maintenance and production employees employed by Respondent at its 2260 DeLa Cruz Boulevard, Santa Clara, California facility; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

7.

(a) Since on or about October 6, 1974, and continuing until at least October 5, 1979, the Union has been the designated exclusive collective bargaining representative of the employees in the Unit, and during said time the Union has been recognized as such representative by Respondent. Such recognition has been embodied in successive collective bargaining agreements, the most recent of which is effective by its terms for the period October 6, 1978 to October 5, 1979.

(b) The most recent collective bargaining agreement referred to in subparagraph (a) above contained, *inter alia*, a Grievance Arbitration Clause (Section 21), and a clause pertaining to the layoff of employees in the Unit (Section 12).

8.

On July 2, 1980, in Case 32-RD-170, the Union was certified as the exclusive collective bargaining representative of the employees in the Unit.

9.

At all times since July 2, 1980, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the Unit, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

10.

On or about August 29, 1980, and at all other times material herein the maximum number of employees in the Unit amounted to forty-five employees.

11.

(a) On or about August 29, 1980, Respondent permanently laid off the following-named employees:

(a) Gerda Brosig	(f) Catherine Kliec
(b) Jean Ceccato	(g) Claire Lundegard
(c) Mildred Baker	(h) Gloria Hernandez
(d) Terri Marquez	(i) Eileen Mueller
(e) Helen Soto	(j) Carmen Mata

(b) Respondent engaged in the conduct described above in paragraph 11(a) in non-conformity with the contractual layoff clause [Section 12] described above in paragraph 7(b).

12.

Commencing on or about August 29, 1980, Respondent bypassed the Union and dealt directly with employees in the Unit, by paying to the employees identified above in paragraph 11, severance pay not provided for in

the collective bargaining agreement described above in paragraph 7.

13.

(a) On or about September 24, 1980 the Union, by letter, filed grievances on behalf of the laid-off employees identified above in paragraph 11, and requested Respondent to process said grievances.

(b) On or about September 24, 1980 the Union, by letter, requested Respondent to bargain collectively with it as the representative of said employees with respect to the layoff and the impact of the layoff on the individuals identified in paragraph 11.

14.

(a) Since on or about October 3, 1980, and continuing to date, Respondent has failed and refused, and continues to fail and refuse, to process the grievances described above in paragraph 13(a).

(b) Since on or about October 3, 1980, and continuing to date, Respondent has failed and refused, and continues to fail and refuse, to bargain with the Union as the exclusive collective bargaining representative of the employees in the Unit with respect to Respondent's decision to layoff the individuals identified above in paragraph 11.

15.

By the acts and conduct described above in paragraphs 12, 14(a) and 14(b), and by each of said acts, Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and Respondent thereby has been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 19th day of March, 1981, at 9:00 a.m., Pacific Standard Time, at a location in Oakland, California to be designated hereafter, and continuing on consecutive days thereafter, a hearing will be conducted before a fully designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the undersigned, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

DATED AT Oakland, California this 24th day of November, 1980.

/s/ James S. Scott
JAMES S. SCOTT, Regional Director
National Labor Relations Board
Region 32
2201 Broadway, P. O. Box 12983
Oakland, California 94604

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD

LITTON FINANCIAL PRINTING DIVISION, A DIVISION OF LITTON BUSINESS SYSTEMS, INC.
and
PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, DISTRICT COUNCIL NO. 1, INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION

Case 32-CA-3160

ANSWER

Litton Financial Printing Division, a Division of Litton Business Systems, Inc., answers the Complaint herein as follows:

1. Admits the allegations set forth in paragraphs 1 through 6, inclusive.

2. Denies the allegations set forth in paragaph 7, except admits the existence of a collective bargaining agreement between the Company and Union, the terms of which speak for themselves.

3. With respect to the allegations of paragraph 8, the Company alleges the certification issued was invalid due to improper conduct on the part of the Union during the critical period preceding the election conducted on or about August 17, 1979.

4. Denies the allegations set forth in paragraph 9.

5. Admits the allegations set forth in paragraph 10.

6. Denies the allegations set forth in paragraphs 11 and 12.

7. Admits that on September 24, 1980 the Union sent a letter to the Company regarding certain layoffs, the terms of which will speak for themselves; otherwise the Company denies the allegations of paragraph 13.

8. Admits the allegations of paragraph 14(a) and alleges that on September 24, 1980 there was no collective bargaining agreement in effect between the Company and Union, and none had been in effect on that date for substantially one (1) year, and that the matters sought to be grieved took place approximately one (1) year after the expiration of the expired agreement between the parties.

Admits the allegations set forth in paragraph 14(b).

9. Denies the allegations set forth in paragraph 15.

As an Affirmative Defense, the Company alleges,

1. That on the date of the layoffs in question, the Union did not represent a majority of the employees in an appropriate unit for purposes of collective bargaining.

2. That on such date, there was no collective bargaining agreement in effect between the Company and Union.

3. That even if the expired agreement had been in effect, there is no provision in that agreement limiting the right of the Company to lay off employees for economic reasons, and that in practice, the Company had always exercised the right to lay off employees for economic reasons without notifying the Union or bargaining with the Union concerning the decision to lay off

employees; that the layoffs in question were purely for economic reasons.

4. That said layoffs were based upon a decision that was essentially financial and managerial in nature, which involved a significant realignment and reallocation of the Company's capital and involved a different method by which the Company would produce its products, by reason of which such decision under current Board law and case law of the Court of Appeals for the Ninth Circuit is not a mandatory subject of bargaining.

5. That the Company has not refused any clear and unequivocal demand from the Union to bargain over the effects of the layoffs.

WHEREFORE, the Company prays that the Complaint be dismissed.

Dated: December 4, 1980

/s/ M. J. Diederich

M. J. Diederich
Attorney for Litton
Financial Printing Division
360 No. Crescent Drive
Beverly Hills, California 90210
Telephone (213) 273-7860

[COLLECTIVE BARGAINING AGREEMENT]
NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

General Purpose of Agreement
Recognition
Wages
New or changed jobs
Night shift differential
Hours
Time Basis
Hours of employment
Overtime
Holidays
Vacations
Notice of Layoff
Injury on Job
Pay Day
Union Membership
Bulletin Board
Union Representatives
Discharge
Arbitration
Strikes — Lockouts
Grievance procedure — Arbitration
Hopsital [*sic*] & Health plan
Retirement plan
Leave of Absence
Jury Duty Pay
Death in Family
Sick Leave Pay
Company Promotions
Supervisors
Wage Controls
Term of Agreement

LITTON FINANCIAL PRINTING COMPANY
DIVISION OF LITTON INDUSTRIES
SANTA CLARA, CALIFORNIA
AND
PRINTING SPECIALTIES & PAPER PRODUCTS
UNION, LOCAL NO. 777, AFFILIATED WITH
DISTRICT COUNCIL NO. 1.

This Agreement by and between LITTON FINANCIAL PRINTING COMPANY, DIVISION OF LITTON INDUSTRIES, SANTA CLARA, hereinafter referred to as the Employer, and the PRINTING SPECIALTIES & PAPER PRODUCTS UNION NO. 777, AFFILIATED WITH DISTRICT COUNCIL NO. 1, subsidiary of the International Printing Graphics Communications Union of North America, hereinafter referred to as the Union.

WITNESSETH: That the above parties do mutually agree that the stipulations set forth shall be in effect for the time hereinafter specified.

SECTION 1
GENERAL PURPOSE OF AGREEMENT

The general purpose of the Agreement is, in the mutual interest of the Employer and the employees, to provide for the operation of the plant hereinafter mentioned under methods which will further, to the fullest extent possible, the safety of the Employees, economy of operation, quality and quantity of output, cleanliness of plant and protection of property. It is recognized by this Agreement to be the duty of the Company and the employees to cooperate fully, individually and collectively, for the advancement of said conditions.

SECTION 2
RECOGNITION

The Employer recognizes the Union as the sole and exclusive collective bargaining agent for all Production and Maintenance employees in the Santa Clara Plant of the Employer who are listed by occupation under Exhibit "A" to this Agreement, and for those who may subsequently be listed under Exhibit "A" as a result of determination of Section 4 of this Agreement.

SECTION 3
WAGES

Wage rates set forth in Appendix "A" shall be the minimum wage rate paid by the Employer to employees working in the classification specified. Appendix "A" is hereby made part of this Agreement.

When an employee is assigned to fulfill a job with a higher wage rate than that of his regular job classification for more than one hour in the regular work day, he shall be paid for all hours worked in which he fulfills the higher paid job at the higher wage rate. If an employee is temporarily assigned to a job classification with a wage rate lower than his regular job assignment, his wage rate shall not be changed.

SECTION 4
NEW OR CHANGED JOBS

If during the term of this Agreement, the Employer changes methods, installs new equipment, eliminates or combines equipment or jobs, which substantially affects the content of an existing job, or if he establishes a new

job, the wage rate paid by the Employer of such affected job, after such job has been in operation for thirty (30) working days, will be subject to negotiations. If the parties are unable to agree to a wage rate within ninety (90) days after the job first went into operation, it may be referred to arbitration under the Grievance Procedure of this Agreement. A wage rate agreed to through the process of negotiation, or arbitration, will be considered the appropriate wage rate and will be made retroactive to the date the change or job first went into operation.

SECTION 5
NIGHT SHIFT DIFFERENTIAL

A shift differential of $.15 per hour worked will be paid to employees whose straight time shift is the second shift and a differential of $.18 per hour will be paid to employees whose straight time shift is the third shift.

SECTION 6
HOURS

Hours of work for all employees on regular day and night shifts shall be eight (8) hours per day, forty (40) hours per week.

SECTION 7
TIME BASIS

Work shall be done on a time basis only.

SECTION 8
HOURS OF EMPLOYMENT

A. (1) For the purpose of applying the night shift differential the normal hours of work shall be as follows:

a) The first or day shift shall start between 7:00 AM and 8:00 AM.

b) The second shift shall start between 3:00 PM and 4:30 PM.

c) The third shift shall start between 11:00 PM and 12:30 PM.

(2) The starting time of the various shifts shall not be changed except upon one weeks written notice or by mutual consent of the Company and the Union.

(3) An employee whose work day overlaps from the first shift into the second shift or from the third shift into the first shift shall be paid the rate of the shift in which the major portion of this time is worked during the particular day.

B. In case any employee reports for work, whether it be one of his regular days or on his day off, having been ordered to report for such work and then no work is provided, he shall nevertheless receive four hours pay for so reporting; if he starts he shall be paid for the full shift; provided, however, in the case of emergencies such as fire, earthquake, or breakdown of equipment, or other such causes beyond the control of the Employer, no allowance for so reporting shall be paid.

C. If any employee starts work on an overtime day he shall be paid for a minimum of four hours except in the exceptions enumerated above.

D. It is agreed that the time for the start of the employee's shift may be changed at any time by the

Management upon notification to the employee before the end of his last preceeding [*sic*] regular shift, provided that there shall be a rest period of not less than twelve hours between the end of one shift and the beginning of the next shift otherwise the overtime rate shall be paid.

SECTION 9
OVERTIME

A. All time in excess of a regular shift shall be overtime and shall be paid for at time and one-half the employee's regular rate of pay for the first four hours and double time thereafter.

B. If employees are worked over five consecutive hours without a lunch period, all time worked in excess of those five hours without a meal period shall be paid at one and one-half times the straight or overtime rate as the case may be.

C. Saturday work: All shifts worked on Saturday, the sixth day of the work week, shall be on a time and one-half basis — See Section 8 — Hours of Employment.

D. Sunday work: All shifts worked on Sunday, the seventh day of the work week, shall be paid for at double the employee's regular rate of pay. Overtime shall be at the rate of time and one-half the Sunday rate of pay.

E. (1) When overtime work assignments are required the Company will assign the overtime to senior qualified employees on the shift and in the department involved. If a senior employee on the shift is excused from an assignment, the Company will then assign the next most qualified employee on the shift and department involved to perform the work.

(2) Each week a form will be posted on the bulletin board. Any employee desiring to work overtime on the weekend shall affix his signature to the form. If overtime is necessary on the weekend, the Company will first assign the senior qualified employee(s) whose name(s) appear on the list, irrespective of their regular shift.

(3) Any employee who is assigned overtime in accordance with the foregoing, but does not fulfill such assignment without just cause, subjects himself to the appropriate consequences involving loss of any applicable amount of future overtime work opportunities.

(4) For the purpose of assigning overtime only, an employee's most recent regular assignment in the department will determine his seniority day and the following department will be recognized: Typing, Duplicating, Finishing, Shipping, and Maintenance.

F. Work before an employee's starting time or after quitting time shall be paid for at overtime rates. By mutual consent between the employee and management, an employee may start early or late and work eight hours at straight-time rates.

SECTION 10
HOLIDAYS

A. New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, Day Before Christmas and Christmas Day shall be recognized as holidays. A Holiday shall

begin at 7:00 AM of the day itself or of the legal day of observance and continue to 7:00 AM of the following day. The rate of pay for all work done on holidays shall be as provided in Section 10(B). Overtime shall be time and one-half the holiday rate of pay.

B. Paid Holidays: Employees shall be paid one day's straight-time pay at the employee's regular rate for the following holidays (or the days legally celebrated) when not worked: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, Day Before Christmas and Christmas Day. To be eligible for holiday pay an employee must have:

(1) performed work within the sixteen calendar days preceding the holiday; and
(2) he must have worked his scheduled shifts immediately preceding and immediately following the holiday, unless excused from either or both because of a reason such as illness, accident, death in family, etc.

The foregoing notwithstanding, if an employee has been absent from work for not more than ninety (90) calendar days preceding the holiday because of a disability incurred in the Company's services and for which he is receiving workman's compensation, he shall, nevertheless, be entitled to holiday pay.

No employee shall be obliged to work on these holidays but any employee who does work on these days shall be paid for work performed at two and one-half times the employee's regular rate and the regular rate for the remainder of the shift not worked. Where a holiday falls on Saturday, the rate of pay for work performed shall be two and one-half times the hourly rate paid the

employee, for the same class of work during the regular straight-time work week, and time and one-half for the remainder of the shift not worked, but the Employer shall have the option of recognizing the previous Friday as the paid holiday instead of Saturday. If a holiday occurs in an employee's vacation period, the employee shall be given an extra day with pay at straight time.

SECTION 11
VACATIONS

A. Each year an employee who has at least one year of continuous service with the Company and who worked at least 1500 hours in the preceding year will be entitled to three weeks vacation with pay.

B. Employees who as of the beginning of the year have not worked a total of 1500 hours in the preceding year will be entitled to a pro rata vacation in an amount equivalent to 6% of the total hours they did work. Hours which do not equal a full day (8 hours) will be paid for in cash and in lieu of time away from work.

C. Each hour of vacation pay shall be on the basis of the employees straight-time rate of his regular job classification. Two weeks (10 working days) of vacation pay shall be consecutive except where otherwise mutually agreeable and shall be granted at times most desirable to the employees, but the final right of allotment of vacation period is reserved to the Company in order to insure efficient plant operation. Except where otherwise mutually agreeable, the employees shall be given at least two weeks prior notice of his or her vacation period. The third week (five working days) of vacation may be taken by mutual agreement between the foreman and the employee at any time during the calendar year and may be divided into periods of two and three days each,

provided each such period shall precede or follow a weekend.

In instances where Employees performing the same type of work in the plant desire the same vacation period, but all cannot be granted the same time because of efficient plant operation, length of service will determine which Employee will be granted the preferred period. Each year the Company will post, no later than March 1, a form for the Employee to request their vacation period for the year.

D. Should an Employee leave an Employer the Employee shall be entitled to vacation on the basis of 2.3 hours pay per week in which he has worked not less than 60% of the straight-time hours for his shift.

E. Time lost as a result of an accident suffered during the course of employment as recognized by the Workmen's Compensation Board shall be added to time worked during the vacation year to qualify under the provisions of this Section.

SECTION 12
NOTICE OF LAYOUTT [*sic*]

A. Whenever an Employer intends to layoff all or part of his employees, he shall give notice of such intention not later than quitting time of the previous working day. It is also understood that in case of layoffs, lengths of continuous service will be the determining factor if other things such as aptitude and ability are equal.

B. The probationary period of all employees shall be three months.

C. Any person employed in an apprenticeship may be removed from that apprenticeship at the discretion of Management at any time during the first twelve months.

D. The Company will notify the Union Steward and the Union office of all new hires and terminations within seven working days of such.

E. The Company will supply the Union with an updated seniority list semi-annually.

F. (1) When it is necessary to increase the number of jobs in the bargaining unit or to replace an employee who is terminated, the Company will recall the most senior employee in layoff status who is qualified to perform the work required.

(2) An employee who is laid off shall retain his seniority status for twelve (12) months. During such period, he shall not be entitled to fringe benefits such as vacation or holidays.

(3) An employee shall lose his seniority for any of the following reasons:

(a) Quit (resignation)
(b) Discharge for "just cause"
(c) Failure to report to work after expiration of an approved leave of absence.
(d) Failure to report to work within three (3) work days when recalled from layoff, except in case of illness or accident. Notice of recall from layoff shall be by certified mail to last known address.
(e) Layoff for more than twelve (12) months.
(f) Absence for more than twelve (12) months for reason of accident or illness unless extended by mutual agreement by the parties.

SECTION 13
INJURY ON JOB

If an employee is injured on the job and is required to consult a doctor, and if the doctor recommends that he not return to work then he shall be paid for a full straight-time shift for that day. Where possible, the Employer and the Union will be notified of any absence beyond that day.

In cases of Industrial Accidents only, if an injured Employee is returned to work and later must return to the doctor, such Employee shall be paid for time lost if the return appointment is during the Employee's normal working hours, only in cases where the appointment cannot be scheduled during non-working hours.

SECTION 14
PAY DAY

A day shall be established by the Employer as pay day. On such day all wages shall be paid before Noon which are earned and unpaid at the close of Sunday preceeding [*sic*] the weekly pay day; provided that when an employee is discharged all wages earned and unpaid shall be paid immediately. When laid off, or when an employee quits or resigns his employment, all wages earned and unpaid must become due and payable within thirty-six hours.

SECTION 15
UNION MEMBERSHIP

A. Thirty-one days after making this Agreement every worker employed under it and now employed,

shall be required as a condition of employment to obtain and retain membership in the Union. Thirty-one days after the beginning of his employment, each worker employed after making this Agreement shall be required as a condition of employment to obtain and retain membership in the Union.

B. The Company will deduct monthly Union dues and initiation fees from the earnings of employees who authorize such deductions on an approved form and which is not in conflict with any statute.

C. When new or additional employees are needed the Employer will notify the Union of the number and classification of employee required so the Union may refer applicants for the vacancies to be filled.

SECTION 16
BULLETIN BOARD

The employer shall supply a glass enclosed Bulletin Board for the use of the Union in posting officially signed Union Bulletins.

SECTION 17
UNION REPRESENTATIVES

The business representative or other duly authorized Union representatives shall be permitted to visit the plant during operating hours for the purpose consistent with this Agreement, provided that he first notify the management before entering the plant. This privilege may not be abused.

SECTION 18
DISCHARGE

A. The Management has the right to discharge any employee for just cause.

B. The Shop Steward of the Union shall be notified if any Employee is being laid off or discharged.

SECTION 19
ARBITRATION

Differences that may arise between the parties hereto regarding this Agreement and any alleged violations of the Agreement, the construction to be placed on any clause or clauses of the Agreement shall be determined by arbitration in the manner hereinafter set forth.

SECTION 20
STRIKES — LOCKOUTS

There shall be no lockouts on the part of the Employer, and the Union and its members, individually and collectively, agree that there shall be no strikes, boycotts, sitdowns, stoppages of work or any other form of interference with production or other operations on the part of the employees during the term of this Agreement.

SECTION 21
GRIEVANCE PROCEDURE

A. Should an employee have a grievance as to the interpretation or application of the terms of this Agreement, there shall be no suspension or interruption of

work on account of such matter and a diligent effort will be made to settle the matter as soon as possible after it has been presented to management. When an employee has a grievance he shall submit same as promptly as possible, but no grievance shall be valid if not presented within fifteen (15) days from the time the cause of the complaint became known to the grievant.

B. When an employee has a grievance the following procedure shall apply.

STEP 1. Between the immediate supervisor and the aggrieved employee, and if the employee so chooses, the Steward.

STEP 2. If the matter is not resolved in Step 1 within three (3) days after it was discussed with the grievant's immediate supervisor, it shall be reduced to writing and submitted to the Plant Manager. The Plant Manager, the shop Steward and a representative of the Union will meet at a mutually convenient time to resolve the matter.

C. If the matter cannot be resolved as provided in Step 2 within two (2) weeks, the matter may then be jointly submitted in writing within twenty (20) calendar days to the American Arbitration Association under its rules then in effect. The award or decision of the arbitrator shall be binding on both parties to this Agreement. Such decision involving a grievance shall be within the scope and terms of this Agreement but shall not change any of its terms. Failure to follow the time limits as provided in this Article, in processing a grievance shall constitute a waiver of the grievance.

Cost of the arbitrator, but excluding expenses for counsel and witnesses, shall be shared by the employer and the union equally.

D. The Union agrees to elect from the employees in the plant a shop committee of three (3) persons for the first one hundred (100) employees and one (1) person for every portion of one hundred (100) employees thereafter.

Said committee shall consist of not less than three (3) and not more than five (5) employees.

E. The cost of the arbitration shall be shared equally by both parties. All other costs incidental to the arbitration proceedings shall be borne by the parties incurring the cost.

SECTION 22
HOSPITAL AND HEALTH PLAN

The present contribution by the Employer to the Printing Specialties and Paper Products Health and Welfare Fund of forty-four dollars ($44.00) per month per Employee, will continue through June 30, 1975, for those Employees working or paid for eighty (80) hours or more per month.

Beginning July 1, 1975, the Employer will contribute to this Fund, fifty-five dollars and seventy-six cents ($55.76) per month for each Employee based on June, 1975 hours. This amount ($55.76) will continue through July 1, 1978.

In the event a Federal or State Health Plan is legislated, this Section will be reopened and amended, if appropriate, to assure that Employees will receive at least the same benefits as now provided by this Plan and that the Company's costs will not be increased and/or, if feasible, reduced.

SECTION 23
RETIREMENT PLAN

The Employer and the Union hereby accept, ratify and become bound by the terms of that certain Trust Agreement and Retirement Benefit Plan, dated October 1, 1955, establishing the Pressmen's Retirement Fund, the same as though they were signatory parties thereto.

The Employer shall contribute monthly to the Pressmen's Retirement Fund the sum of twenty-one dollars and sixty-five cents ($21.65) per month per employee working or paid for eighty (80) hours or more per month. Said contributions shall be made in the manner prescribed by the Retirement Fund Committee.

The parties agree that the provisions of this section shall be binding and in full force and not subject to change during the term of this agreement.

It is understood and agreed that the contributions to the Pressmen's Retirement Fund shall constitute deductible business expense by the Employer for income tax purposes.

SECTION 24
LEAVE OF ABSENCE

A. An Employee who has been with the Company for one year may be allowed a leave of absence without pay for justifiable cause. Such leave is not to exceed thirty (30) days (except as provided as follows:) Employees desiring a leave of absence must so request in writing and it must be approved by the Company in writing. The Company will furnish the Union or their authorized representative a copy of the leave form upon approval.

Same to contain name and address. Seniority shall accumulate during such leave.

B. Extension of Personal Leave: Extension of leave of absence for a period beyond thirty (30) days may be granted at the discretion of the Company in unusual cases and for justifiable cause, if requested by the employee in writing before the expiration of the first thirty (30) days of leave of absence. If any extension is granted by the Company, the Union shall be notified. Employees on extended leave of absence shall not accumulate seniority for more than six (6) months.

C. Failure to Return from leave: Any employee granted leave of absence under the provision of this Article, who does not return to work upon the expiration of such leave of absence or is found to have accepted other employment, shall be considered to have terminated his employment, unless otherwise mutually agreed upon between the Company and the Union.

D. If an employee is elected or appointed to a full-time position with the Union, he shall upon proper application be granted a leave of absence not to exceed one year.

E. Leaves of absence in cases of pregnancy shall conform to the applicable law.

SECTION 25
JURY DUTY PAY

Employees who have established seniority who lose regular straight time hours of work because they are required to report to the court for jury service, shall upon presentation of a statement signed by an officier [*sic*] of the court which signifies the time involved shall

be reimbursed for regular straight time hours lost less the amount of money received from the court.

A day shift employee who is excused by the court in time to work at least one-half of his shift must report for work in order to be entitled to the benefit herein provided.

A swing shift employee must not report for his shift on the day he is required to report for jury duty if such call consumes a total of at least five (5) hours. Reasonable travel time to and from the court will be considered as time spent in the service of the court.

SECTION 26
DEATH IN THE FAMILY

Employees shall be compensated for loss of time from work to attend the funeral or make arrangements for the funeral of Mother, Father, Brothers, Sisters, Spouse, Children, Grandmother, Grandfather, Mother-in-Law, Father-in-Law, Step-children living in the home of the employee, and step parents, up to three days.

It is understood that payment will not be made for holidays, vacations, weekends, etc.

SECTION 27
SICK LEAVE PAY

A. 1) Employees who have had at least twelve (12) months of active service with the Company immediately preceding October 5, 1970, are entitled to a maximum of six (6) sick leave days without loss of pay, subject to the conditions specified herein.

Employees who had less than one year but more than six months continuous service with the Company, imme-

diately preceding October 5, 1970, or his anniversary date which ever [*sic*] is appropriate will be entitled to one such sick leave day for each 172 hours of work.

2) Effective October 5, 1971 or the employees anniversary date if appropriate and each subsequent October 5, or the employees anniversary date if appropriate an employee will be entitled to one (1) sick leave day without loss of pay for each 172 hours worked in the preceding twelve months, but in no event will an employee be credited for more than six (6) paid sick leave days during such a period.

B. Unused sick leave days are cumulative from one twelve months period (October 5 to October 5, or the anniversary date if appropriate) to another, but the maximum paid sick leave days to which an Employee may be entitled, at the beginning of any appropriate twelve (12) months period, is twenty-four (24). No paid sick leave days are convertible to cash.

C. Sick leave pay is subject to the following conditions:

1) To be entitled to sick leave pay, an employee must be physically disabled to such an extent that he is prevented from working his entire shift. Maternity leave is not considered sick leave.

2) For each period of disability, as defined herein, an employee will not be entitled to sick leave pay for the first two working days lost. However, if the employee submits a medical certificate for a reputable medical doctor for each day of absence, sick leave pay will commence the first day lost. Too, if an employee is confined to a hospital because of illness or if the disability is the result of an accident, sick leave pay will commence the first work day lost following admission to the hospital and/or following the accident.

3-a) An employee who is absent for more then three (3) consecutive work days must substantiate such disability by presenting a medical certificate to the Company from a reputable medical doctor.

b) Although a medical certificate will not be required for absence up to and including three (3) work days, the employee must submit reasonable proof of his illness. During the first three (3) days of such absence, the Company may require the employee to submit to a medical examination, at the expense of the Company, to determine proof of disability.

4) An employee who is unable to report to work because of disability will be considered as being absent without just cause, if he does not report his inability to work within a reasonable time prior to his scheduled shift or as soon as practicable.

D. An employee who fraudulently applies for sick leave will be discharged from the Company's employment. If the Company elects not to discharge the employee, the employee will be subject to a disciplinary layoff and/or be required to forfeit sick leave pay up to a maximum of six (6) days.

E. A day of sick leave will be calculated by multiplying eight (8) hours by the employees regular classified wage rate.

F. The Sick Leave Pay Section does not prejudice or abrogate any management right to any of the provisions of the Agreement.

G. An employee entitled to either a Workman's Compensation Benefit or a State Disability Benefit in addition to sick leave pay shall be entitled only to that amount of a days sick leave pay which together with the Workmans Compensation Benefits, or State Disability Benefit equals his eight hour straight time earnings. Such unused sick leave time will be credited to the employees record subject to the provision of Section "B" of this Section.

MEMORANDUM OF AGREEMENT

It is understood that sick leave pay entitlement as provided in Section 27 of the Agreement between the parties is dependent under certain specified conditions upon submission of a medical certificate from a "reputable medical doctor" as provided in Subsection D of said Section 27. However without prejudice to such requirement, sick leave may be granted when a certificate is submitted by other than a Medical Doctor, such as from a D.D.S. or an optometrist and where it is established that the employee's physical condition was such that work could not be performed on the day in question and where the examination or treatment could not have been performed during non-working hours.

It is further understood that pursuant to Section 27 (C) (1) granting of sick leave pay under no circumstances will be granted for routine medical, eye or dental examinations.

SECTION 28
COMPANY PROMOTIONS

It is the policy of the Company to promote from within. When an employee desires a better job assignment or a different shift assignment, he will so apply to the Company in writing. When a job or shift vacancy occurs the Company will consider such appropriate applications on file at the time. In making the assignment, the Company will consider the applicant's seniority, and his ability to fulfill the requirements of the position available.

SECTION 29
SUPERVISORS

Supervisors who are exempt from the bargaining unit shall not perform work done by those they supervise except supervisors may perform bargaining unit work: (1) in emergencies, (2) when it is necessary to correct and/or avoid an interruption of production, (3) to instruct, (4) to experiment, and (5) for the purpose of research and development for improved production and manufacturing methods. An emergency exists when (1) the Employer is unable to obtain bargaining unit employees to perform the work, and (2) when there is a threat to property or the health of employees.

SECTION 30
WAGE CONTROLS

Increased economic benefits provided by this Agreement will be applied only if they are permitted by

legislation, Executive orders, or regulations involving wage and benefit control.

SECTION 31
TERM OF AGREEMENT

This Agreement, including Exhibit "A" shall be enforced and remain in effect from the Sixth (6) of October, 1974, and shall be considered self-renewing for yearly periods thereafter unless notices filed by either party with the other part, in writing, to change or alter at least sixty (60) days prior to the fifth (5) day of October, 1977. If either party serves such notice, both parties may suggest changes.

WAGES

APPENDIX "A" attached hereto reflects general wage increases effective October 6, 1974, November 9, 1975 and October 3, 1976, in the amounts of 10%, 8% and 9% respectively for all job classifications.

s/ ANTHONY RODRIQUEZ 9/25/74
FOR THE EMPLOYER

s/ CLAYTON (MICKEY) HAYES 9/25/74
FOR THE UNION

APPENDIX "A"
WAGE RATES

CLASSIFICATION	Rate Effective 10/6/74	Rate Effective 11/9/75	Rates Effective 10/3/76
General Work - "B"			
1st 3 months	3.30	3.56	3.88
Next 6 months	3.56	3.84	4.19
2nd 6 months	3.73	4.03	4.39
3rd 6 months & thereafter	4.00	4.32	4.71
General Work - "A"			
Mail Sorter			
1st 3 months	3.88	4.19	4.57
Next 6 months	4.27	4.61	5.02
Thereafter	4.44	4.80	5.23

CLASSIFICATION	Rate Effective 10/6/74	Rate Effective 11/9/75	Rates Effective 10/3/76
Duplicator Operator			
1st 3 months	3.50	3.78	4.12
Next 6 months	3.75	4.05	4.41
2nd 6 months	3.92	4.23	4.61
3rd 6 months & thereafter	4.18	4.51	4.92
Maintenance Man			
1st 3 months	4.28	4.62	5.04
Next 6 months	4.64	5.01	5.46
2nd six months	4.87	5.26	5.73
3rd six months	5.31	5.73	6.25
4th six months	5.41	5.84	6.37
5th six months & thereafter	5.57	6.02	6.56

CLASSIFICATION	Rate Effective 10/6/74	Rate Effective 11/9/75	Rates Effective 10/3/76
Paper Cutter 29" and over			
1st 3 months	4.09	4.42	4.82
Next six months	4.54	4.90	5.34
2nd six months	4.84	5.23	5.70
3rd six months	5.18	5.59	6.09
4th six months	5.49	5.93	6.46
5th six months	5.83	6.30	6.87
Thereafter	6.15	6.64	7.24
Paper Cutter under 29"			
1st 3 months	3.88	4.19	4.57
Next six months	4.27	4.61	5.02
Thereafter	4.44	4.80	5.23

Employees designated as leadmen or leadwomen shall receive $.13 per hour in excess of the above day rates.

APPENDIX "A"
WAGE RATES

CLASSIFICATION	Rate Effective 11/9/75	Employee Hired after 3/8/76	Rates Effective 10/3/76 Employee Hired prior to 3/8/76	Rates Effective 10/3/77
General Work - "B"				
1st 3 months	3.56	3.56	3.88	3.88
Next 6 months	3.84	3.84	4.19	4.19
2nd 6 months	4.03	4.03	4.39	4.39
3rd 6 months & thereafter	4.32	4.72	4.72	5.11
General Work - "A"				
Mail Sorter				
1st 3 months	4.19	4.19	4.57	4.57
Next 6 months	4.61	4.61	5.02	5.02
Thereafter	4.80	5.23	5.23	5.67

CLASSIFICATION	Rate Effective 11/9/75	Employee Hired after 3/8/76	Rates Effective 10/3/76 Employee Hired prior to 3/8/76	Rates Effective 10/3/77
Duplicator Operator				
1st 3 months	3.78	3.78	4.12	4.12
Next 6 months	4.05	4.05	4.41	4.41
2nd 6 months	4.23	4.23	4.61	4.61
3rd 6 months & thereafter	4.51	4.92	4.92	5.34
Maintenance Man				
1st 3 months	4.62	4.62	5.04	5.04
Next 6 months	5.01	5.01	5.46	5.46
2nd six months	5.26	5.26	5.73	5.73
3rd six months	5.73	5.73	6.25	6.25
4th six months	5.84	5.84	6.37	6.37
5th six months & thereafter	6.02	6.56	6.56	7.12

CLASSIFICATION	Rate Effective 11/9/75	Employee Hired after 3/8/76	Rates Effective 10/3/76 Employee Hired prior to 3/8/76	Rates Effective 10/3/77
Paper Cutter 29" and over				
1st 3 months	4.42	4.42	4.82	4.82
Next six months	4.90	4.90	5.34	5.34
2nd six months	5.23	5.23	5.70	5.70
3rd six months	5.59	5.59	6.09	6.09
4th six months	5.93	5.93	6.46	6.46
5th six months	6.30	6.30	6.87	6.87
Thereafter	6.64	7.24	7.24	7.86
Paper Cutter under 29"				
1st 3 months	4.19	4.19	4.57	4.57
Next six months	4.61	4.61	5.02	5.02
Thereafter	4.80	5.23	5.23	5.62

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

ADDENDUM TO AGREEMENT

Litton Financial Printing, Santa Clara, California Plant and the Printing Specialties and Paper Products Union Local 777, affiliated with District Council No. 1, and a subsidiary of the International Printing Graphics Communications Union of North America hereby agree to amend their Agreement effective October 6, 1974, as follows.

1) Section 11 — Vacations

Add the following to Section 11(A).

Employees hired on or after March 8, 1976, will be entitled to the following vacation provided they have worked at least 1500 hours in the preceding calendar year. Employees with one (1) year of continuous service will be entitled to one (1) week vacation with pay. Employees with two (2) years of continuous service will be entitled to two (2) weeks vacation with pay. Employees with three (3) years of continuous service will be entitled to three (3) weeks vacation with pay.

Amend Section 11(B) as follows.

Employees who at the beginning of the year have not worked a total of 1500 hours in the preceding year will be entitled to pro rata vacation as follows: Employees who have at least one (1) year of continuous service at the beginning of the year will be entitled to a pro rata vacation in an amount equivalent to two percent (2%) of the total hours they did work. Employees who at the beginning of the vacation year have two (2) years

of continuous service will be entitled to a pro rata vacation in an amount equivalent to four percent (4%) of the total hours they did work. Employees who at the beginning of the vacation year have three (3) years or more of continuous service will be entitled to a pro rata vacation in an amount equivalent to six percent (6%) of the total hours they did work. Hours which do not equal a full day (eight hours) will be paid for in cash and in lieu of time away from work.

Amend Section 11(D) as follows.

Should an employee who has qualified for a vacation in accordance with Section A above leave the Employer, he shall be entitled to a vacation on the basis of 2.3 hours per week in which he has worked not less than six percent (6%) of the straight time hours for his scheduled shift, if he qualifies for three (3) weeks vacation in accordance with (A) above. If he qualifies for either one or two weeks in accordance with (A) above, he will be entitled to either .77 or 1.15 hours pay per week in which he has worked not less than six percent (6%) of the straight time hours for his shift in the week, as the case may be.

2) Section 22 — Health and Welfare

Amend Section 22 by adding as a third paragraph:

Subsequent to October 3, 1977, if the Trust determines that the current Company contribution per month per employee is insufficient to maintain current plan benefits, the Company will be subject to and agrees to increase its contribution by the amount necessary to maintain current benefits at a rate of and at the time that the majority of

employers under contract with District Council No. 1 are paying said increased amount.

3) Section 23 — Retirement

Amend Section 23 by adding the following as a third paragraph:

Effective September, 1978, the employer's contribution to said retirement plan will be $28.87 per employee per month.

4) Section 31 — Term of Agreement

Amend Section 31 as follows.

This Agreement shall become effective from October 6, 1974, and should remain in effect through October 3, 1978, and should be automatically renewed from year to year thereafter unless either party serves written notice on the other party by registered mail at least ninety (90) days before any annual expiration date of its intention to terminate the Agreement or negotiate any changes in the Agreement. If the parties are unable to reach an accord or a complete amended Agreement thirty (30) days prior to the expiration date of the Agreement, they shall jointly enter into a stipulated agreement to arbitrate unresolved issues in accordance with the following procedure and rules:

A. A tripartite arbitration board is hereby authorized to hear, consider and determine the basis of settlement of the unresolved issues referred to by the parties.

   1. The Union shall appoint one member to the board and the Company shall appoint one member to the board. The Union and the Company board members shall mutually select the third member of the

board who shall act as the impartial chairman. In the event the Union and the Company board members are unable to agree upon the third member, they shall jointly request the American Arbitration Association to submit a panel of arbitrators whom they shall select as the third member. The impartial third member shall act as chairman of the tripartite board.

2. The board shall convene as frequently as necessary to hear evidence and argument.

3. Upon hearing all evidence and argument, the Board shall commence to determine the basis of settlement for amended agreement.

4. In any instance where the Board cannot agree, the impartial chairman shall decide.

5. (a) The issue(s) which the Board is authorized to consider will be reduced to writing and executed by all Board members. Only those issues which have been submitted for negotiations by the parties and upon which no agreement has been reached at the time this arbitration is invoked, may be included among the issues for the Board to consider. Proposals on the included issues by either party to resolve issues made during the negotiation but which were not accepted will not be

submitted to the impartial chairman; only the issue will be submitted.

(b) By mutual agreement and so executed in writing, the parties may elect at least thirty (30) days prior to the termination of the Agreement the following in lieu of the procedure so outlined in (a) above in this Paragraph "5": If the parties are unable to agree upon a complete agreement thirty (30) days prior to the expiration date of this Agreement, the last offer of each party to reach a full agreement will be submitted to the arbitration panel. The panel will then rule if either the Company's offer or the Union's offer should be the basis of settlement for the Agreement. The panel will have no authority to alter the proposals but merely select which offer should be the basis of the Agreement.

5) Section 32 — Wages

APPENDIX "A" attached hereto reflects general wage increases effective October 6, 1974, November 9, 1975, October 3, 1976, and October 3, 1977.

For the Company:	For the Union:
/s/ L. R. Libhart	/s/ Clayton (Mickey) Hayes

Date signed April 22, 1976

APPENDIX "A"
WAGE RATES

CLASSIFICATION General Work - "B"	Rate Effective 11/9/75	Employee Hired after 3/8/76	Rates Effective 10/3/76 Employee Hired prior to 3/8/76	Rates Effective 10/3/77
1st 3 months	3.56	3.56	3.88	3.88
Next 6 months	3.84	3.84	4.19	4.19
2nd 6 months	4.03	4.03	4.39	4.39
3rd 6 months & thereafter	4.32	4.72	4.72	5.11
General Work - "A" Mail Sorter				
1st 3 months	4.19	4.19	4.57	4.57
Next 6 months	4.61	4.61	5.02	5.02
Thereafter	4.80	5.23	5.23	5.67

CLASSIFICATION	Rate Effective 11/9/75	Employee Hired after 3/8/76	Rates Effective 10/3/76 Employee Hired prior to 3/8/76	Rates Effective 10/3/77
Duplicator Operator				
1st 3 months	3.78	3.78	4.12	4.12
Next 6 months	4.05	4.05	4.41	4.41
2nd 6 months	4.23	4.23	4.61	4.61
3rd 6 months & thereafter	4.51	4.92	4.92	5.34
Maintenance Man				
1st 3 months	4.62	4.62	5.04	5.04
Next 6 months	5.01	5.01	5.46	5.46
2nd six months	5.26	5.26	5.73	5.73
3rd six months	5.73	5.73	6.25	6.25
4th six months	5.84	5.84	6.37	6.37
5th six months & thereafter	6.02	6.56	6.56	7.12

CLASSIFICATION	Rate Effective 11/9/75	Employee Hired after 3/8/76	Rates Effective 10/3/76 Employee Hired prior to 3/8/76	Rates Effective 10/3/77
Paper Cutter 29" and over				
1st 3 months	4.42	4.42	4.82	4.82
Next six months	4.90	4.90	5.34	5.34
2nd six months	5.23	5.23	5.70	5.70
3rd six months	5.59	5.59	6.09	6.09
4th six months	5.93	5.93	6.46	6.46
5th six months	6.30	6.30	6.87	6.87
Thereafter	6.64	7.24	7.24	7.86
Paper Cutter under 29"				
1st 3 months	4.19	4.19	4.57	4.57
Next six months	4.61	4.61	5.02	5.02
Thereafter	4.80	5.23	5.23	5.62

Press Operator (Hot Type)		Rates Effective 11/9/75	Rates Effective 10/3/76	Rates Effective 10/3/77
1st 3 months	80%	4.16	4.53	4.91
2nd 3 months	85%	4.42	4.81	5.22
Next 6 months	90%	4.68	5.09	5.53
Thereafter		5.20	5.66	6.14
Intertype Operator				
1st 6 months	70%	4.20	4.58	4.92
2nd 6 months	75%	4.50	4.91	5.33
3rd 6 months	80%	4.80	5.23	5.68
4th 6 months	85%	5.10	5.56	6.03
5th 6 months	90%	5.40	5.89	6.39
6th 6 months	95%	5.70	6.21	6.75
Thereafter		6.00	6.54	7.10

Cut Boy	Rates Effective 11/9/75	Rates Effective 10/3/76	Rates Effective 10/3/77
1st 3 months	3.56	3.56	3.88
Next 6 months	3.84	3.84	4.19
2nd 6 months	4.03	4.03	4.39
3rd 6 months & thereafter	4.32	4.72	5.11

Employees designated as leadmen or leadwomen shall receive $.13 per hour in excess of the above day rates.

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

[Logo and union byline omitted in printing]
2267 TELEGRAPH AVENUE, OAKLAND,
CALIFORNIA 94612 (415) 451-0309

RETURN RECEIPT REQUESTED
CERTIFIED NO. P05 7485628

September 24, 1980

Mary Arnold
Plant Manager
Litton Financial Printing
2260 De La Cruz Boulevard
Santa Clara, California 95050

Re: Grievance Nos. 3251, 3252, 3253, 3254, 3255, 3256, 3257, 3258, 3259 and 3260

Dear Ms. Arnold,

The aforementioned grievances have been filed on behalf of those employees laid off out of seniority, to wit: Gerda Brosig, Jean Ceccato, Mildred Baker, Terri Marquez, Helen Soto, Catherine Kliec, Claire Lundegard, Gloria Hernandez, Eileen Mueller and Carmen Mata.

The Union hereby requests that the Company meet with our representative to discuss this layoff and its impact on these senior people, and requests that pending resolution of this matter, that each and all of them be reinstated to their employment.

Sincerely,
/s/ Marilyn Major
Marilyn Major
Business Representative

MM:jo
dcl
cc: David Rosenfeld

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

VAN BOURG, ALLEN, WEINBERG & ROGER
A PROFESSIONAL CORPORATION
875 BATTERY STREET
SAN FRANCISCO CALIFORNIA 94111
TELEPHONE (415) 864-4000
[Attorney names and other addresses omitted in printing]

November 10, 1980

M. J. Diederich, Esq.
Litton Financial Printing
360 North Crescent Drive
Beverly Hills, CA 90210

Re: Litton Financial Printing, Santa Clara

Dear Mr. Diederich:

Marilyn Major has forwarded to me your letter of November 3, 1980 for response.

Your self-serving statement which appears in the second paragraph is rejected. You obviously knew that the Union was requesting *both* the utilization of the grievance-arbitration procedure and a meeting to discuss both the decision to lay off the workers and the effects upon those employees. It is, however, apparent that your decision to lay these employees off was a *fiat accompli* as of the date the layoffs were effected.

In any case, the Union is willing to meet with you at your earliest convenience in order to discuss these layoffs. We once again assert our right to grieve and to submit if necessary to binding arbitration these layoffs as we feel they are directly in contravention of the

principles in the Collective Bargaining Agreement which still governs the relationship between Printing Specialties and Litton.

In any case, please supply us the following information so that we may effectively discuss and/or grieve these layoffs:

(1) The name of each employee laid off within the last year.

(2) The seniority dates, dates of hire and classifications of each employee listed above.

(3) Any internal reports or studies which mention, concern or relate to the reasons for the layoffs.

(4) Any economic forecasts which relate to these layoffs or the possibility of rehire.

Upon receipt of this information, Ms. Major will contact you in order to set up a meeting so that this discussion may occur. Please be advised that we consider your willingness now to meet to discuss these layoffs a recognition of Printing Specialties and District Council No. 1 continues to be the collective bargaining representative of your employees in the unit previously recognized.

Sincerely,

/s/ David A. Rosenfeld
DAVID A. ROSENFELD

DAR/po
ope-3 (1)

cc: Ms. Marilyn Major, District Council No. 1
Mr. Gary Dunmire, District Council No. 1

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

LITTON INDUSTRIES
360 North Crescent Drive
Beverly Hills, California 90210 213 273-7860

November 3, 1980

Ms. Marilyn Major, Business Representative
Printing Specialties & Paper Products Union
District Council No. 1
2267 Telegraph Avenue
Oakland, California 94612

Re: Litton Financial Printing Santa Clara

Dear Ms. Major:

In going through some old mail today, I came across your letter of September 24 and read it again.

It appears to me to be ambiguous. When I first replied to it on October 3, I viewed it as a request to utilize the grievance-arbitration provisions of the expired contract.

Upon reading it again, I can see where you might have also been requesting a meeting to discuss the effects of the layoffs mentioned in your letter. If that was your intent, I have no objection to such a meeting. Please call me if you wanted to arrange a discussion.

Very truly yours,
/s/ M. J. Diederich
M. J. Diederich
Attorney for
Litton Financial Printing

MJD:md
cc: Mary Arnold
Litton Financial Printing
Santa Clara

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

Seniority List — August 26, 1980

EMPLOYEE NAME	HIRE DATE	DEPARTMENT
A. Mendez	10/31/60	Bindery
C. Cordova	4/20/61	Typing
G. Brosig	12/6/61	Cutter
J. Ceccato	6/4/62	Press
P. Eddy	8/19/64	Press
M. Baker	8/24/64	Proofer
F. Oyer	10/19/64	Bindery
T. Marquez	8/11/65	In Mail
P. Mears	12/4/67	Press
H. Soto	1/16/68	Addressograph
C. Klier	3/4/68	Typing
C. Valencia	11/20/68	Bindery
M. Johnston	3/12/69	Cutter
C. Pecci	5/6/69	Bindery
G. Gallegos	9/8/69	Press
B. Mangan	9/9/69	Typing
L. Smith	9/25/69	Typing
C. Lundegard	6/7/71	Typing
B. Buranek	9/7/71	Press
T. Larsen	8/23/72	Hot Type
E. Schurpf	9/26/73	Press
B. Feder	10/20/75	Typing
H. Busch	3/29/76	Inter Type
E. Najar	4/19/76	Hot Type
L. Guzman	6/21/76	Press
G. Hernandez	8/11/76	Bindery
R. Villagomez	8/25/76	In Mail
D. Erickson	9/13/76	Typing
L. Stockdale	9/16/76	Bindery

EMPLOYEE NAME	HIRE DATE	DEPARTMENT
R. Taamai	10/4/76	Proofer
E. Moeller	6/9/77	Addressograph
S. McDougall	6/21/77	Stock
P. Busch	7/21/77	Out Mail
C. Mata	11/10/77	Bindery
N. Levao	7/13/78	Bindery
W. Osborn	3/1/79	Hot Type
M. Velasco	8/6/79	Hot Type
A. Pena	9/24/79	Bindery
R. Pena	10/23/79	Out Mail
G. McHenry	11/26/79	Mechanic
R. Navarette	3/5/80	Night Wash Up
J. Arteaga	5/19/80	Cut Boy

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

LITTON FINANCIAL PRINTING
2260 De la Cruz Boulevard
Santa Clara, California 95050 408 727-3262
September 4, 1980

Gates, McDonald & Company
P. O. Box 1944
Columbus, Ohio 43216

Dears Sirs,

Following information is a separation report for listed personnel.

Name	S.S. #	Date Hired	Date Seperated	Vacation Pay	Severance Pay
Jean Ceccato	561-38-2543	6/4/62	9/2/80	498.30	2,559.80
Mildred Baker	544-07-9387	8/24/64	8/29/80	395.53	2,253.40

Name	S.S. #	Date Hired	Date Seperated	Vacation Pay	Severance Pay
Teresa Marquez	572-54-7536	8/11/65	8/29/80	951.77	2,134.80
Catherine Klier	567-03-4430	3/4/68	8/29/80	809.45	1,779.00
Claire Lundegard	556-01-8427	6/7/71	8/29/80	619.69	1,423.20
Gloria Hernandez	564-74-3738	8/11/76	8/29/80	667.13	830.20
Eileen Moeller	555-12-7822	6/9/77	8/29/80	829.92	711.60
Helen Soto	548-46-5458	1/16/68	9/2/80	524.81	1,779.00
Carmen Mata	547-02-5583	11/10/77	8/29/80	415.69	711.60
Raul Navarette	560-35-8420	3/5/80	8/29/80	0	N/A
Brosig		12/6/61	8/29/80 9/2/80		3,830.40

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

[SELECTED PAGES OF TRANSCRIPT OF HEARING]

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* * * *

identification is the addendum to stated agreement. Which is a five page document which by its terms runs from October 6, 1974 to October 3, 1978 —

JUDGE LITVACK: You said 74 to 78?

MS. MILOWICKI: That's right. It's an addendum that we were talking about. It runs from 1974 to 1978. And it's marked for identification as General Counsel's No. 3.

(The documents referred to were marked for identification as General Counsel's Exhibits Nos. 2 and 3.)

MS. MILOWICKI: At this time, I'd like to propose a stipulation that the items marked for identification as General Counsel's 2 and 3 were the collective bargaining agreements in effect until October of 1978, and then because there was no timely reopener, in October of 1978, the same documents that have already been marked for identification, they were automatically renewed until October of 1979.

MR. DIEDERICH: So stipulated.

MS. MILOWICKI: I would like to propose the stipulation that the documents marked as General Counsel's 2 and 3 are authentic and move them into evidence.

MR. ROSENFELD: No objection.

JUDGE LITVACK: Mr. Diederich?

MR. DIEDERICH: No objection.

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1979. But due to the hearings and so on and all the decisions issuing, that's an issue.

JUDGE LITVACK: Okay. Does anyone have anything preliminary before we take evidence?

Ms. Milowicki?

MS. MILOWICKI: No, Your Honor.

JUDGE LITVACK: Mr. Rosenfeld?

MR. ROSENFELD: No, Your Honor.

JUDGE LITVACK: Mr. Diederich?

MR. DIEDERICH: NO.

JUDGE LITVACK: Okay. Why don't you call your first witness?

MS. MILOWICKI: The General Counsel calls to the stand Ms. Marilyn Major.

Whereupon,

MARILYN MAJOR

having been first duly sworn, was called as a witness herein, and was examined and testified as follows.

JUDGE LITVACK: Please be seated and state your full name and address for the record.

THE WITNESS: Marilyn Major, 1777 Shoreline Drive, Alameda.

DIRECT EXAMINATION

BY MS. MILOWICKI:

Q Ms. Major, do you have a position with Printing

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Specialties and Paper Products Union?

A Yes.

Q What is your position?

A I'm a business representative.

Q How long have you held that position?

A Approximately two and a half years.

Q Do you have any responsibilities with regard to Litton Industries?

A Yes, I do, I'm the representative assigned to represent the membership at that plant.

Q How long have you had that duty?

A Since about April or May of 1979, I believe.

Q And were you the representative in August of 1980?

A Yes, I was.

Q Do you continue to be the representative?

A Yes, I am.

Q Were you ever notified by anyone from Litton Management that the employees on whose behalf you filed the grievances were going to be laid off before those layoffs actually occurred?

A No, I was not.

JUDGE LITVACK: Don't — Ms. Milowicki, don't skip around. There's no evidence in the record of any grievances other than a letter, so —

MS. MILOWICKI: There's documents —

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JUDGE LITVACK: Yeah, I know. But I can understand the document, but — don't jump ahead of the testimony. It makes the record unclear when you do that.

BY MS. MILOWICKI:

Q Were you ever notified by anyone from Litton management that these layoffs were going to occur?

A No, I was not.

Q How did the layoffs come to your attention?

A Through telephone calls from the laid off employees.

Q Did you subsequently file grievances on behalf of those employees that were laid off?

A Yes, I did. The grievances were filed by the steward at my instruction.

MS. MILOWICKI: I have no further questions of this witness.

(Pause.)

MR. ROSENFELD: Your Honor, may I examine the witness briefly?

JUDGE LITVACK: Yeah, wait a second.

(Pause.)

Go ahead.

DIRECT EXAMINATION

BY MR. ROSENFELD:

Q At the time the layoffs occurred, was any other agent of the Union assigned to handle matters at Litton?

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A There were two other representatives that had been assigned and I don't believe that assignment had ever been withdrawn, but at that particular time, I was the only representative actively handling the plant.

Q To your knowledge, was anyone else in the Union notified of the layoffs prior to the layoffs?

A No.

Q To your knowledge, the Union was not notified of the layoffs prior to the layoffs?

A No, that's true.

MR. ROSENFELD: I have nothing further.

MR. DIEDERICH: Did the witness submit an affidavit?

MS. MILOWICKI: Yes, Your Honor.

MR. DIEDERICH: Could I have it, please?

MS. MILOWICKI: Let the record reflect that I am showing Counsel for Respondent a two page document

that's an affidavit of the witness taken on November 4, 1980.

JUDGE LITVACK: Let's take a ten minute recess. Off the record.

(Whereupon, a short recess was taken.)

JUDGE LITVACK: On the record.

Just so I understand what your legal position is on the obligation to at least process the grievances, is it your position that you have no legal obligations — assuming now that — putting aside your contention that the Union is not

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* * * *

lend some meaning toward the agreement.

JUDGE LITVACK: Her understanding doesn't — of the provision is irrelevant. The document does speak for itself. On the other hand, grievances were filed because of these layoffs. Perhaps you want to get at it another way. I mean, ask her what the basis of the grievances were.

BY MR. DIEDERICH:

Q Let me ask — let me withdraw that question. You told us that you instructed the steward to file some grievances?

A That's true.

Q Who was that steward?

A Linda Stockdale.

Q And you instructed her over the telephone?

A Yes, I did.

Q What did you tell her?

A I told her to file grievances on behalf of the employees who had been laid off, to present them to the Company on the standard grievance forms, and that I would be following that presentation with a letter verifying the fact that the grievances were considered filed by the Union.

JUDGE LITVACK: Well, did Ms. Stockdale ever file the grievances, or was your letter dated September 24th the filing of the grievances?

THE WITNESS: Ms. Stockdale did file the grievances. However, the Company was refusing at that time to accept

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grievances from the steward, so my letter was follow up to document the fact that the grievances had been filed.

BY MR. DIEDERICH:

Q All right. Let me retrace that now. You instructed her on the telephone to prepare some grievances on the standard grievance form. And did she do that?

A Yes, she did.

Q Did she subsequently give those prepared grievance forms to you?

A So she informed me.

Q Pardon?

A So she did inform me, yes.

MR. ROSENFELD: No, wait a minute.

BY MR. DIEDERICH:

Q Did she give you the grievance forms which she had prepared?

A She sent me the Union's copy of the grievance forms.

Q And did you review them at that time?

A Yes, I did.

Q And did you then return and transmit those to the Company on September 24, with a letter?

A Yes, I did.

Q Did you — there were separate grievance forms for each employee?

A Yes, that's true.

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under the provisions in the contract.

Q As a matter of fact, when you filed the grievances with the Company on September 24 which Linda Stockdale had prepared at your instruction, wasn't the only objection that you raised was the fact that these people had been laid off out of seniority?

A That was the primary concern. Also to the fact that the people had been given no opportunity to bump into other employment within the plant. Also that there had been no notification.

Q That would have related to —

JUDGE LITVACK: Just —

MR. DIEDERICH: Excuse me, I'm sorry. I didn't mean to interrupt you. Go ahead and repeat that, so the reporter gets it.

THE WITNESS: That the people had been laid off out of seniority, that they had been given, to my knowledge, no opportunity to bump into other positions within the plant, and that the Union had not been given any notification of the layoffs.

BY MR. DIEDERICH:

Q And your understanding that the Company had the right to lay people off, that was derived, was it not, simply from reading the contract and conversations you had when you became business agent or business representative?

A I believe that's an accurate statement, yes.

JUDGE LITVACK: Well, when you say the Company had the

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right to lay people off, is that an unqualified right, or was there qualifications to it?

THE WITNESS: Qualifications with reference to the stipulations that exist in the contract as to how layoffs were to take place.

JUDGE LITVACK: Okay.

BY MR. DIEDERICH:

Q In other words, as long as they gave the appropriate day notice, and followed seniority, then the Company would have been in compliance as far as you're concerned?

A That is an incomplete statement but the —

Q Then you complete it for me, would you, please.

A Okay. In the terms of observing the seniority rights of the employees involved in the layoff situation which would have to do with review of their qualifications for movement into other existing jobs within the facility, and observance of their seniority in terms of the other people retained in the jobs that they had been performing. These would be the elements that I would be concerned with in evaluating whether or not a layoff justified a grievance on the part of the individual laid off.

MR. DIEDERICH: I have no more questions, thank you.

JUDGE LITVACK: Any redirect?

MS. MILOWICKI: I don't have anything, Your Honor.

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REDIRECT EXAMINATION

BY MR. ROSENFELD:

Q Ms. Major, were you given — by you, I mean the Union, an opportunity to discuss these layoffs with the Employer?

A No, I was not.

Q Were you given an opportunity to discuss the effects of these layoffs on the employees?

A With the Employer, no, I was not.

JUDGE LITVACK: Could we have a time period for these questions, Mr. Rosenfeld?

BY MR. ROSENFELD:

Q At any time.

A No, I was not. At no time.

Q Were there other employees still working in the plant after the employees that are the subject of this matter were laid off?

A Yes, there were.

MR. ROSENFELD: I have nothing further.

RECROSS EXAMINATION

BY MR. DIEDERICH:

Q Ms. Major, it's your testimony that you were not given an opportunity to discuss with the Company the effects of the layoff?

A Oh, okay, I beg your pardon. I recall an exchange of letters in which the grievance was filed, the grievances were

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filed, the Company responded with a letter stating in effect that the Company was not liable to respond to the grievance procedure, followed at some time subsequent thereto, several weeks subsequent thereto by — it might even have been longer, I really, the time sequence is a little confused right now, — but there was another letter at some point subsequent thereto stating that in going through some old papers, the Company had found my letter requesting the opportunity to discuss the matter with the Company regarding the layoffs. And I responded to that letter that I would refer the matter to our attorney and the Company would be contacted by our attorney.

Q And did you refer that letter to your attorney?
A Yes, I did.
Q And who was that?
A David Rosenfeld of Victor Van Bourg's firm.
Q So you were advised at some point in time, particularly when you received that letter from the Company, that the Company was willing to meet and discuss with you the effects of the layoff, is that not right?
A That is true, yes.
Q Were you not also offered, or was there not also a suggestion that if you wanted to have such a meeting that you contact the Company and set up such a meeting?

MR. ROSENFELD: Your Honor, it's clear from the testimony up to this point that that offer, if any, was —

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MR. ROSENFELD: No objection.

JUDGE LITVACK: All right. I'll grant that motion to strike Paragraph 11(b) from the Complaint.

Do you have any further witnesses, Ms. Milowicki?

MS. MILOWICKI: No, Your Honor.

JUDGE LITVACK: Mr. Rosenfeld, do you have any witnesses?

MR. ROSENFELD: May I have just a moment?

JUDGE LITVACK: Certainly.

(Pause.)

JUDGE LITVACK: Are you resting your case then?

MS. MILOWICKI: Yes, Your Honor.

JUDGE LITVACK: Mr. Rosenfeld, do you have any witnesses?

MR. ROSENFELD; Mary Arnold.

Wherupon, [*sic*]

MARY ARNOLD

having been first duly sworn, was called as a witness herein, and was examined and testified as follows.

JUDGE LITVACK: Have a seat and state your full name and address for the record.

THE WITNESS: Mary Eileen Arnold, 552 San Jose Avenue, Germaine, California.

DIRECT EXAMINATION

BY MR. ROSENFELD:
Q Ms. Arnold, in 1980, were you employed by Litton Financial Printing?

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A Yes, I was.
Q In what capacity?
A As plant manager, Santa Clara plant.
Q And were you involved in the layoffs of the employees involved in this proceeding?
A Yes, I was.
Q The employees that were laid off, were they part of any department at the facility? At the plant?
A Any department?
A Yes. What department did they work in?
A Various departments.
Q And how many various departments?
A All that are attached to the plant.
Q How many departments are there?
A Bindery, typing, press, operators, with the exception of hot type area.

JUDGE LITVACK: Mr. Rosenfeld, I'm sorry. I didn't get what your occupation is. You work for — who do you wōrk for?

THE WITNESS: Litton Financial Printing.

JUDGE LITVACK: As what?

THE WITNESS: At the present time, I'm a project analysist [*sic*].

JUDGE LITVACK: Thank you.

BY MR. ROSENFELD:

Q The departments in the plant were bindery, press and what else?

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A Typing, in mail.
Q Is cutter a department?
A No.
Q Is inter-type a department?
A No.
Q So the three departments are bindery, press and typing?
A There's also a hot type area. Or department.
Q Was there some economic reason for the layoffs of the people involved in this?
A Yes.
Q And what was that economic reason?
A Well, there were two methods of producing checks in the plant at the time. One's called cold type; the other one's called hot type. The cold type operation — the quality of the product that we can produce at this point in time is no longer acceptable to banks, and cold type operation was and is being phased out in favor of the hot type operation.

JUDGE LITVACK: Excuse me, I realize there's no objection to this, but what is this testimony going to? The employee has not — there is nothing in the Complaint about the validity of the grievance.

MR. ROSENFELD: I know, but, Your Honor, I asked the question earlier to whether the Employer had an obligation to bargain over layoffs. And I think that

the record ought to reflect the nature of the layoffs. For that reason.

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JUDGE LITVACK: This testimony is not going to the validity of the grievance?

MR. ROSENFELD: No.

JUDGE LITVACK: Okay.

BY MR. ROSENFELD:

Q And the ten people that were laid off were laid off as a result of the gradual change from cold type to hot type?
A That's correct.
Q Now, when did you begin changing from cold type to hot type in that plant? Well, let me rephrase that question. When did Litton make the initial decision to phase out cold type in favor of hot type?
A Some time — the discussions started the early part of the year.
Q Early part of 1980?
A Right.
Q And where were those discussions carried out, I mean, in what level of management?
A Well, they started in top management and then filtered down to the plant level.
Q When did you first become aware of any discussion to phase out the cold type?
A Well, there were discussions some time in the middle of June, preliminary.
Q In terms of phasing out the cold type, did this mean the

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Q Well, which of them worked on the cold type equipment?

JUDGE LITVACK: Do you know which ones we're talking about?

BY MR. ROSENFELD:

Q Well, let me show you General Counsel's Exhibit 8. I'll show you my copy which has the name Brosig written at the bottom since we stipulated that that was a layoff. Which of these people worked specifically on the cold type equipment?

A Okay. Well, Jean Ceccato, Mildred Baker, Teresa Marquez, Catherine Klier, Claire Lundegard, Eileen Moller, Helen Soto.

Q And what work did Helen Soto do?

A Helen Soto was an addressograph operator.

Q And she worked on — was the addressograph machine she worked on in September or October?

A It was not removed, no —

Q It wasn't removed, was it?

A No, it wasn't removed. But the work that that machine was doing is greatly reduced, and so the work isn't there to be done any more.

Q After Ms. Soto was laid off, the machine remained, did it not?

A The machine remained.

Q And there remained some work to be done on that machine, isn't that correct?

A Minimal, right.

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Q There is some work, yes or no?

MR. DIEDERICH: Your Honor, I want to object. She's asked and answered and you're not cross examining her. You called her as your witness.

JUDGE LITVACK: Not only that, I don't understand how this is relevant to the obligation to bargain. It seems to me you're dealing with — you're talking about individual jobs, and you're dealing with the validity of

the layoff. That's not an issue, and I'm not going to let you litigate it.

MR. ROSENFELD: Now —

JUDGE LITVACK: Is that clear, Mr. Rosenfeld?

MR. ROSENFELD: I understand your —

BY MR. ROSENFELD:

Q Half the people laid off worked on the hot — on the cold type equipment, and half did not, that's —

A No, I didn't say that.

Q Well, you gave me six names of people who worked on the cold type equipment.

A There were a few people that did other things besides, but mainly their duties were involved in cold type, but not totally.

(Pause.)

Q But this layoff reduced the number of people in the bargaining unit by about what per cent?

A I don't know. I never figured it out on a percentage

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A Yes.

Q Give us just a brief description of the nature of the company's business.

A The Company's business is, we are check printers. And we process checks for customers and banks on various colors of paper and various package quantities.

Q You're talking about personal and business checks that the average customer of a bank would use.

A That's correct.

Q And your Company prepares those checks for the banks?

A For the banks' customers.

Q Are your contractual relationships with the banks' customers or with the banks?

A With the banks.

Q Is there more than one plant?
A Yes, there are seven.
Q Where are they located?
A Fresno, California; Los Angeles, California; San Diego, California; the Santa Clara plant, California; Nacaville, which is back in Michigan; and Munson, which is back in Massachusetts.
Q And in all of these plants, do they prepare or produce checks?
A Yes.
Q Is there anything different about any of the six plants

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that you mentioned from the others?
A The difference between the Santa Clara plant and the remainder of the plants wat that Santa Clara had a dual operation. They processed checks by methods of both offset and hot type. None of the other plants do that.
Q When you say offset, is that the same as cold type?
A Cold type, yes.
Q Was there anything different about the operation in the Fresno plant?
A No.
Q What about base stock?
A There was a limitation with the cold type operation; with the cold type operation that we had, there was a limitation as to how many items we could print up on a sheet of paper.
Q Let me rephrase my question. Did all six of the plants prepare their own base stock?
A. No.
Q Where did the base stock for the plants come from?
A It comes from a central location which is located in Fresno.

Q That would have been the Fresno plant?
A The Fresno base stock plant; there's also an imprint plant there.
Q All right. Would you give us a description of the cold type operation —

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checked. Then it comes out into the plant again, and goes on to — the intertype are the — the vertical presses and these — the configurations on the forms are in a twelve-on format. There are twelve to a page.
Q So in a hot type operation, you get twelve to a page, and in cold type, the most you can get is five?
A Right.
Q Did there come a time in the Company when a decision was made to go from cold type operation totally to a hot type operation?
A Yes.
Q At that time, other than in Santa Clara, were there any other plants of Litton using the cold type operation?
A No.
Q Explain for us — did you participate in the decisionmaking process?
A. Yes.
Q Would you explain for us the reasons for the decision? What was the decision? To go to hot type?
A The decision was to go to hot type.
Q What were the reasons for the decision?
A One of the major decisions — one of the major reasons was that the banks had been expressing discontent with the quality of the work that we were able to produce for them on a cold type operation.

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when there's no dispute about the layoffs?

JUDGE LITVACK: Wait, Mr. Diederich. Mr. Diederich. You withdrew your question, then you restated another one. He didn't object to that one, to the second one.

MR. DIEDERICH: All right. Tell us whether or not, about this time, you had layoffs?

MR. ROSENFELD: Objection, Your Honor. That's leading. When he says, "about this time", it —

JUDGE LITVACK: All right. It's over. It's not a leading question. What time are you talking about, Mr. Diederich? What time period are you talking about? She hasn't told us when this —

MR. DIEDERICH: First — the end of August.

JUDGE LITVACK: Well, let me — about approximately when did the Company lose this Wells Fargo business?

THE WITNESS: Some time in July, the beginning — we knew about it — we had prior information on it starting out some time in around July.

JUDGE LITVACK: All right. And when was the final decision made to go to hot type printing?

THE WITNESS: It was made then after that, very soon after that.

JUDGE LITVACK: Okay.

THE WITNESS: The discussions had been going on previous to this, that it would be a good idea to do this, but

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if I have something to say, at least listen to it, you know.

MR. DIEDERICH: I'm listening.

JUDGE LITVACK: Yeah, but you seem to be talking while I'm trying to talk.

The whole point, Mr. Rosenfeld, is that it may be leading if no questions at all had been asked before, but the witness has spent ten minutes discussing how they implemented the decision, so I hardly think the question is leading at that point.

Now, Mr. Diederich.

BY MR. DIEDERICH:

Q As a result of going from out of the cold type business, so to speak, was there a need to lay people off?

A. Yes.

Q Will you explain that? Were the people who were laid off involved in cold type or hot type or what? That's what I'm driving at.

A The people that were — the majority of the people that were laid off — the people that were laid off were involved in cold type. As a primary job.

Q Did the decision to go from cold type to hot type, was that implemented, so to speak, overnight, or was there some phasing in, phasing out type of plan in effect?

A No, there had to be a phase out operation because before there could be a phase in.

Q Would you explain how that worked?

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A We received a letter with the grievances attached to it.

Q I'll show you what's been admitted as General Counsel's 4 and ask you if that's the letter you received with the grievances?

A Yes.

Q Now, Ms. Arnold, that letter, among other things, besides attaching the grievances, says, "The Union hereby requests that the Company meet with our representatives to discuss this layoff and its impact on these

senior people, and requests that pending resolution of this matter, that each and all of them be reinstated to their employment." Do you remember that letter.
A Um hmh.
Q You forwarded that letter to Mr. Diederich, didn't you?
A Yes.
Q You didn't answer it yourself?
A No.
Q Now, you're still paying health and welfare and pension contributions per the expired contract, aren't you?
A As far as I know.
Q Now, when you received — now, as I understand it, the steward initially presented the grievances to the Company, is not that correct?
A Not that I recall.
Q When did you first become aware of the grievances?

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end result of the discussions, the decision was made.
Q When — by this, I'm asking for the date.
A The specific date — I can't give you a specific date.
Q Was it in April, May or June?
A It was later than that because the results of what we'd previously talked about hadn't been all — the decision hadn't been reached at that time. The decision was made some time, I would say, the end of July or middle August.
Q Now, when was the work actually transferred to other plants?
A It started to go out before the layoffs took effect.
Q And when did you complete transferring the work to the other plants?

A It wasn't completed until some time after the layoffs took place.
Q How long?
A Two, three weeks.
Q And you never went to the Union and discussed — or you never notified the Union that work was being transferred out of the plant, did you?
A. No.
Q Now the people who were laid off were people who worked exclusively on cold type equipment or the associated equipment?
A Yes.
Q And these tended to be the — well, I assume the cold

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type was the initial type of equipment in the plant. Hot type came in later?
A Yes.
Q So the people who had capabilities only in cold type tended to be the older people, people with more seniority?
A In some cases.
Q Well, the fact is of the first eleven people on the seniority list, six of them were laid off, isn't that correct?
Q Um hmh.
JUDGE LITVACK: The witness is technically accurate when she said in some cases. All that you're showing is that she's right, in some cases.
BY MR. ROSENFELD:
Q The fact is that in the top eleven people of the seniority list, over half of them were laid off?
A In the beginning, that plant was strictly a cold type operation.

Q Well, ma'am, of the first eleven people on the seniority list —

MR. DIEDERICH: I want to object —

JUDGE LITVACK: She's answered your question, Mr. Rosenfeld.

BY MR. ROSENFELD:

Q Now, after the people were laid off, you paid them severance pay, didn't you?

* * * *

[SELECTED QUESTIONS AND ANSWERS FROM TRANSCRIPT OF HEARING]

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MS. MILOWICKI: Yes, Your Honor. General Counsel would lilke to mark for identification GC No. 7 a seniority list titled August 26, 1980, produced in response to the subpoena. General Counsel would like to offer a stipulation that this is a seniority list of the employees employed in the unit covered by

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the collective bargaining agreement, and that the document was produced in response to a subpoena, and lists the hire dates of the employees that are pled in the Complaint. And move it into evidence.

MR. DIEDERICH: I have no objection and I join in the stipulation.

JUDGE LITVACK: I take it that the unit that is pled in the Complaint is the maintenance and production unit, and these are the employees in that unit, is that what you're talking about?

MS. MILOWICKI: Yes, Your Honor.

JUDGE LITVACK: And Mr. Diederich, am I to understand that this is — this was — this document represents a compillation [*sic*] of Respondent's records and represents all the people in the unit?

MR. DIEDERICH: It's not a compilation of records; it is an actual record that the Company had at that time, which was a seniority list.

JUDGE LITVACK: Okay. But these are — this is the sum total of the employees in the bargaining unit?

MR. DIEDERICH: Yes.

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MR. ROSENFELD: I join in that, Your Honor.

JUDGE LITVACK: All right. General Counsel's Exhibit No. 7 is received.

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MS. MILOWICKI: General Counsel would like to mark for identification as General Counsel's No. 8 a document that is entitled "Following information is a seperation [*six*] report for listed personnel" that has on it the names of the employees that were pled in the Complaint and the amount of severance pay that they received.

The General Counsel would like to offer a stipulation that this document is authentic, that it was produced in response to a subpoena and move it into evidence.

JUDGE LITVACK: Mr. Diederich?

MR. DIEDERICH: So stipulated and no objection.

JUDGE LITVACK: And Mr. Rosenfeld?

MR. ROSENFELD: I join in that, Your Honor.

JUDGE LITVACK: All right. General Counsel's No. 8 is received.

(The document referred to was marked for identification as General Counsel's Exhibit No. 8, and was received in evidence.)

MS. MILOWICKI: At this time —

JUDGE LITVACK: Without looking at the — without

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comparing each and every individual, Ms. Milowicki, are all the names listed in the Complaint, Paragraph 11(a), on General Counsel's No. 8? Are they the same?

MS. MILOWICKI: Yes, Your Honor. Yes, Your Honor.

JUDGE LITVACK: Mr. Diederich, is that your understanding?

MR. DIEDERICH: No, that is not corret. There is one individual by the name of G. Brosig whose name is not on that document. The reason her name was not on that document is because at that time she was taking vacation, so her severance pay was paid later, and was actually $3,830.40.

JUDGE LITVACK: Do you have a separation date for her?

MR. DIEDERICH: And the separation date — no, we don't have a separation date for her. Actually, she would have been separated the same day, Your Honor, except that she was on vacation, so there was a period of two to three weeks when she was on vacation. So I think the same — the separation date for her would have been —

JUDGE LITVACK: You have two —

MR. DIEDERICH: 8/29.

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MR. DIEDERICH: Well, there's one employee who was laid off who apparently had no seniority at all, that's Raul Navarette.

* * * *

JUDGE LITVACK: Okay. That stipulation is received.

I noticed in your Answer to the Complaint, you denied the allegations set forth in Paragraph 11 based on what is represented on General Counsel's No. 8 and what you've stipulated to. Is that still your position as to the paragraph, or is there something about the paragraph which you feel is

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wrong?

MR. DIEDERICH: Well, there's something about the paragraph, it's — if you look at 11(a), Your Honor, it says that the Respondent permanently lost those employees, and what I was denying was that we permanently laid them off. We laid them off, but obviously we intended to subsequently recall them, so it couldn't have been a permanent layoff.

And, 11(b) I denied because it alleges that we laid those employees off in nonconformity with Section 12 of the expired collective bargaining agreement and we deny that. I think we complied with the terms of that agreement, even though it had expired a year earlier.

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MS. MILOWICKI: Oh, I'm sorry. No, Your Honor. There is one item that — there is a motion for — that Respondent is

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challenging the certification and there is a motion for some rejudgement on that issue pending before the Board, and that should that decision come down before you write your decision in this case, we would be happy to send that to you.

JUDGE LITVACK: I would be bound by you to send that to me. I take it — I was going to ask you about that, but you —

MR. DIEDERICH: Well, it raises a rather interesting question. I suppose you could decide that the Company had no obligation to bargain with the Union, but the Board might decide otherwise, or vice versa.

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JUDGE LITVACK: All right. Now, in going over the Complaint and the Answer, I did have some questions. One I think has been taken care of. I can't get — based on what you've told me, Ms. Milowicki, there obviously had been — well, let me ask. Had you filed objections to the conduct of the election, Mr. Diederich?

MR. DIEDERICH: Yes.

JUDGE LITVACK: Okay. And I take it that the Region had issued a report finding that they were not meritorious in certifying —

MR. DIEDERICH: I think the Region initially issued a report setting the matter for hearing. If I'm correct — and eventually there was a hearing, and there was a hearing officer's report which overruled the objections. And I believe a petition for review or exceptions — I forget which one — were not accepted, or were rejected by the Board. And then —

JUDGE LITVACK: By the Board, and —

MR. DIEDERICH: Then there was an 8(a)(5), a continued refusal to bargain, and an 8(a)(5) case filed. And an Answer filed. And then a Motion for Summary Judgment, which is still

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pending before the Board.

JUDGE LITVACK: Okay. So there is a Motion for Summary Judgment pending right now before the Board?

MR. DIEDERICH: Yes. Which will go toward the validity of the certification.

JUDGE LITVACK: That goes to your first affirmative defense, No. 1?

(Pause.)

MR. DIEDERICH: Yes, yes, that's what's involved in that allegation.

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MS. MILOWICKI: Yes, sir. The — it is a position of the General Counsel that the certification that issued in July of 1980 that's part of the formal documents is a valid certification. The motion that's up for Summary Judgment is just a typical technical 8(5), just testing that certification.

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JUDGE LITVACK: On the record.

Just so I understand what your legal position is on the obligation to at least process the grievances, is it your position that you have no legal obligations — assuming now that — putting aside your contention that the Union is not

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the majority representative of the employees, assuming that it is —

MR. DIEDERICH: Yes.

JUDGE LITVACK: Is it your position that Respondent has no legal obligation even to meet and process the grievances through the steps of the grievance procedure, not including arbitration?

MR. DIEDERICH: Uh —

JUDGE LITVACK: Or does it go solely to the issue of whether or not you had the majority?

MR. DIEDERICH: It's my position that Section 8(a)(5) of the Act does not require the Company to process grievances through the formal grievance procedure

and certainly not to participate in arbitration. I acknowledge again, assuming that the Union did represent the employees and had majority status. That certification was valid. The Company would have an obligation to bargain collectively about grievances. But not to follow a grievance procedure, a step by step grievance procedure which was outlined in a contract which had expired approximately a year earlier.

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MR. DIEDERICH: I assume that there are cases where contracts have expired and the parties have been bargaining, maybe a strike's in effect, and the Company has taken unilateral action. I don't know if *American Sink Top* is that type of case, but I think we have here a case which may be a little different. Because here you have a case where you're testing the certification, and a passage of a year, and I think those are relevant and significant factors that would be considered by the Board.

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MS. MILOWICKI: I'm sorry to interrupt you. To the extent that the contractual layoff clause — although we mentioned severance elsewhere, I should back up on that a little bit. Our basic contention in Paragraph 11(b) is that the

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employees were laid off out of seniority. To the extent that the layoffs were permanent and could be construed as terminations, we are also contending that the employees — that the Union should have been notified about

those layoffs prior to the layoffs in conformity with the contractual layoff clause which will speak for itself.

JUDGE LITVACK: Okay. Mr. Diederich, is it your position vis a vis Paragraph 11(b) that other considerations, other than seniority, went into the layoffs of some of these people?

MR. DIEDERICH: Yes.

JUDGE LITVACK: All right. Ms. Milowicki, do you have evidence — are you going to present any affirmative evidence that — because I've noticed, in reading Paragraph 12(a), it says, "It is understood that —

MR. DIEDERICH: 12(a)?

JUDGE LITVACK: Yes. Paragraph 12(a) — no, of the contract, I'm sorry.

MR. DIEDERICH: Oh, I'm sorry.

JUDGE LITVACK: It says, "It is also understood that in case of layoffs, length of continuous service will be the determining factor if other things such as aptitude and ability are equal." Is it your position that all the employees listed on this seniority list were equal as to aptitude and ability and therefore your people alleged in the Complaint were laid off solely because — or should not have been laid off because of

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their seniority?

MS. MILOWICKI: It is our contention that the people that we have alleged in the Complaint were laid off out of seniority, the General Counsel does not plan to put on any affirmative evidence as to aptitude and ability, and contends that that would in essence be litigating the underlying grievance.

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Q Now, you're still paying health and welfare and pension contributions per the expired contract, aren't you?

A As far as I know.

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MR. DIEDERICH: Our position is that we were willing to discuss the grievances with the Union, but we were not willing to go through a formal grievance and arbitration procedure which is what they were demanding.

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NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

[SELECTED PAGES OF DECISION]

JD-(SF)-242-81
Santa Clara, CA

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

LITTON FINANCIAL PRINTING DIVISION,
A DIVISION OF LITTON BUSINESS
SYSTEMS, INC.
and
PRINTING SPECIALTIES AND PAPER
PRODUCTS UNION, DISTRICT COUNCIL
NO. 1, INTERNATIONAL PRINTING AND
GRAPHIC COMMUNIATIONS UNION

Case No. 32-CA-3160

Patricia Milowicki, Atty., of Oakland, CA, for the General Counsel.
David Rosenfeld, Esq., Van Bourg, Allen, Weinberg & Roger, of San Francisco, CA, for the Charging Party.
M. J. Diederich, Esq., Corporate Director of Industrial Relations, of Beverly Hills, CA, appearing for Respondent.

DECISION

BURTON LITVACK, Administrative Law Judge

Statement of the Case

This matter was heard before me in Oakland, California on March 19, 1981. On November 24, 1980[1] the Regional Director for Region 32 of the National Labor Relations Board, herein called the Board, issued a complaint, based upon an unfair labor practice charge filed on October 27 by Printing Specialties and Paper Products Union, District Council No. 1, International Printing and Graphic Communications Union, herein called the Union, alleging that Litton Financial Printing Division, a Division of Litton Business Systems, Inc., herein called Respondent, engaged in acts and conduct violative of Section 8(a)(1) and (5) of the National Labor Relations Act, herein called the Act. Respondent filed an answer, denying the commission of any unfair labor practices. All parties were afforded the opportunity to offer relevant evidence, to examine and cross-examine witnesses, and to submit post-hearing briefs. All parties filed such briefs, and these have been carefully considered. Based upon the entire record, the post-hearing briefs, and upon my observation of the demeanor of the witnesses, I make the following:

[1] Unless otherwise stated, all events herein involved occured in 1980.

Findings of Fact
[Left margin line numbers omitted in printing]

I. Jurisdiction

Respondent, a State of New York corporation, with an office and place of business in Santa Clara, California, is engaged in the wholesale printing and distribution of financial documents. During the 12-month period immediately preceding issuance of the complaint, Respondent, in the normal course and conduct of its business operations, purchased and received goods or services valued in excess of $50,000 directly from suppliers located outside the State of California and sold and shipped goods and products valued in excess of $50,000 directly to customers located outside the State of California. The answer admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

The answer admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. Issues

1. Did Respondent violate Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union concerning its decision to lay off 10 employees?

2. Did Respondent violate Section 8(a)(1) and (5) of the Act by refusing to abide by the terms of its expired collective-bargaining agreement with the Union by refusing to process grievances through, and including, arbitration concerning the laid-off employees?

3. Did Respondent violate Section 8(a)(1) and (5) of the Act by, without prior notice to or bargaining with the Union, by-passing the Union and paying to the aforementioned 10 laid-off employees severance pay benefits.

A. Facts

Respondent is a State of New York corporation and is engaged in the business of printing bank checks for utilization by customers of commercial banks. While the checks are printed in accordance with customer orders, Respondent's contractual relationship remains with its client banks. In performing its service, Respondent has plants located in Nacaville, Michigan; Munson, Massachusetts; and Fresno, Los Angeles, San Diego, and Santa Clara, California. At all times material herein, Mary Arnold was the plant manager at Respondent's Santa Clara, California facility, the only one of the aforementioned plants involved herein.

With regard to the Santa Clara facility, the record discloses that for several years, the Union has been the collective bargaining-representative of the production and maintenance employees employed therein and that, at least since 1974, Respondent and the Union have been signatory to collective-bargaining agreements covering said individuals. The most recent contract expired on October 5, 1979. Pursuant to the filing of a decertification petition, on August 17, 1979, the Regional Director of Region 32 conducted a secret ballot election in a unit consisting of the production and maintenance employees employed at the plant; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act. A majority of the voting unit employees cast ballots in favor of the Union, and on July 2, 1980, the Union was certified as the exclusive representative for purposes of collective bargaining of the

employees in the aforementioned unit. Notwithstanding said certification, commencing on August 1, Respondent refused to bargain with the Union. Thereafter, a charge was filed in Case 32-CA-3036, and on June 12, 1981, the Board concluded[2] that by its aforementioned conduct, Respondent had acted in violation of Section 8(a)(1) and (5) of the Act.

The record further discloses that the events, giving rise to the allegations herein, had their genesis prior to the Board's certification of the Union. Mary Arnold testified that early in 1980 Respondent's upper management officials commenced studying and discussing the feasibility of converting the check-printing process at the Santa Clara, California plant from utilization of both the hot type[3] and cold type[4] printing methods to solely

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2 256 NLRB No. 77.

3 In the hot-type printing process, orders are either sent directly to the Santa Clara plant by the customer bank or the latter sends a magnetic tape, containing all check information, to Respondent's main computer center in Los Angeles, from which location the check information is disseminated to all plants which are participating in the bank's order. In either case, the order is fed into an "intertype" machine in which lead "personalization" of the ordered check is produced. The lead is then proofread and placed in vertical printing presses, and checks are imprinted on a "twelve-on" format (12 checks to a sheet).

4 In the cold-type printing process, check orders would be received at the Santa Clara plant and sorted down by color and size (business checks would be printed in a "three-on" format while personal checks were printed in a "five-on" format). Next, the order would be given to an individual who operated an addressograph machine. This machine contains a diecrul plate upon which the bank's branch information has previously been imprinted, and said information is, during this process, printed on the "paper master" of the check order. Next, a typist transcribes the check order information onto the paper master. After proofreading, the order plate is placed in an offset

(continued)

a hot-type printing procedure. At that time, that plant was the only one of Respondent's facilities in which both printing methods were employed and, in fact, the only plant utilizing the cold-type process. According to Arnold, four factors influenced Respondent's contemplated elimination of this latter method: a loss of orders due to customer bank discontent with the quality of print produced by the cold-type printing method; the "twelve-on" format produced by the hot-type procedure was more economical; in the event of an emergency, other plants would thereafter be able to "pick up" Santa Clara's work; and, finally, training, research and development, and equipment costs would be significantly reduced by use of a single printing process.

Despite the foregoing considerations, as of July Respondent had not yet finally decided to implement the purposed conversion of the Santa Clara facility to wholly a hot-type printing operation.[5] However, in that month, a major customer, Wells Fargo Bank, cancelled approximately 30 percent of its cold-type print orders, and, according to Arnold, the final decision to cease utilizing cold-type printing ". . . was made . . . very soon after that." Arnold further testified that implementation of Respondent's conversion plans was not intended to be an overnight process but rather a gradual one: ". . . there had to be a phase out operation . . . before there could be a phase in." Thus, Respondent required time to remove the existing cold-type printing equipment from the plant and to install additional hot-type equipment. In order to

(ftn. continued)
printing press in which process the order is photoengraved onto check stock.

5 At one time, cold-type print orders constituted 60 percent of the Santa Clara plant's business. By July, this percentage had decreased to approximately 30 percent of the work at that location.

facilitate this procedure, ". . . some work that we were doing on cold type . . . was transferred to one of the other plants . . .," with the intent that after sufficient hot-type equipment was operational, ". . . we could then go back and pick that work up . . ." on a hot-type basis. Arnold stated that the decision to divert the remaining cold-type print orders to this other plant was reached in mid-August and that the complete transferral of such work was not completed until mid-September.[6] With regard to the remaining cold-type printing equipment, the record reveals that as of the hearing date, of Respondent's 16 or 17 offset printing presses, six or seven typewriters utilized only for this work, two addressograph machines, and some miscellaneous equipment, Respondent continued performing minimal work on the addressograph machines, had removed from the plant and warehoused the offset printing presses and excess typewriters, had sold two printing presses, and was actively seeking buyers for the remaining material. Also, Respondent was in the process of purchasing new hot-type equipment and transferring to Santa Clara such machinery from other plants. As of the hearing date, Respondent's capital expenditures, involved in the conversion process, were approximately $20,000.

The record further reveals that in the midst of transferring cold-type printing work to the other plant and out of an existing employee complement of 42 individuals, on August 29 and September 2, Respondent laid off 10 employees: Mildred Baker, Teresa Marquez, Catherine Klier, Claire Lundegard, Gloria Hernandez, Eileen Moeller, Carmen Mata, Jean Ceccato, Helen Soto, and

6 As previously noted, Arnold testified that Respondent's Santa Clara facility was the sole facility which maintained a cold-type printing capability. She did not explain this contradiction.

Geida Brosig. Arnold testified, "We decided to lay people off because we lost a volume of business and . . . we then made the decision to go to hot type." Elaborating further upon the relationship between the decision to lay off employees and the implementation of the conversion plan, she testified, "The work that we lost from Wells Fargo Bank and the comments that we'd been having from some other banks about our [cold type] quality were specifically involved . . . ."[7] Specifically as to why the above individuals were selected for the layoff, Arnold next stated, ". . . the people that were laid off were involved in cold type. As a primary job." Closely examined on this point by counsel for the Union, Arnold stated that employees Ceccato, Baker, Marquez, Klier, Lundegard, Moeller, and Soto worked solely on cold-type equipment and that the remaining laid-off individuals ". . . did other things besides but mainly their duties were involved in cold type, but not totally."[8] Arnold compared these employees to those who were retained, averring, without contradiction, that the latter employees all possessed dual capabilities in both printing processes.[9]

The record establishes that each of the laid-off employees was a member of the bargaining unit for which the Union had been certified as the representative for

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7 Under cross-examination, Arnold admitted that the transfer of work out of the Santa Clara plant was a partial reason for some of the layoffs.

8 Arnold admitted that employee Brosig worked on neither hot- or cold-type equipment but rather was classified as an "operator" and worked on a machine called a "guillotine cutter."

9 Arnold, in response to a question posed by counsel for the Union, agreed that rather than laying off the 10 employees, Respondent might have undertaken to retrain them to perform hot-type printing work.

purposes of collective bargaining and that notwithstanding this fact and the absence of any such provision in the expired collective-bargaining agreement between the parties and of any past practice to give such compensation, Respondent gave severance pay, in amounts ranging from $711.60 to $2,599.80, to each laid-off individual without first notifying and giving the Union an opportunity to bargain.[10] As to the procedure for layoff, Section 12(A) of the aforementioned expired contract sets forth the parties' practice in this regard:

> Whenever an Employer intends to lay off all or part of his employees, he shall give notice of such intention not later than quitting time of the previous working day. It is also understood that in case of layoffs, lengths of continuous service will be the determining factor if other things such as aptitude and ability are equal.

Marilyn Major, a Union business agent who has been responsible for the bargaining-unit employees since April or May 1979, testified without contradiction, that no Union representative was notified prior to the August 29 and September 2 layoffs that such would occur. Finally, a review of General Counsel's Exhibit No. 7, which is a seniority list for all employees as of August 26, 1980, establishes that the above-described layoffs

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10 Arnold testified, "Top management decided that that was a company policy and that was right to do that." There is no other record evidence regarding a past practice to grant severance pay, and Arnold did not elaborate on her vague testimony on this point. Accordingly, I do not conclude that Respondent had any sort of past practice in this regard.

were not consummated in strict accordance with seniority.

Business agent Major testified that she first became aware of the layoffs when informed by the affected employees themselves. Thereupon, she instructed the shop steward, Linda Stockdale, to file grievances, pursuant to the grievance and arbitration procedure set forth in Section 21 of the expired collective-bargaining agreement.[11] Although Arnold could not recall the filing of any grievances, Major testified that such were filed, and General Counsel's Exhibit 4 has 10 attachments, all dated September 5, which are grievance forms for each laid-off employee, protesting the propriety of each respective layoff. Major further testified that Respondent refused to accept any of the grievances, and I specifically credit her more logical testimony in this regard. In any event, on September 24, as a ". . . follow up to document the fact that the grievances had been filed," Major sent a letter to Arnold, stating that the aforementioned grievances had been filed and requesting ". . . that [Respondent] meet . . . to discuss this layoff and its impact on these senior people . . . ." Respondent admits that it failed and refused, and continues to fail and refuse, to process the employee grievances pursuant to the grievance and arbitration procedure, set forth in the expired collective-bargaining agreement. On November 3, Respondent's attorney wrote to Major agreeing to a meeting ". . . to discuss the effects of the layoffs . . . ." On November 10, the Union's attorney responded, renewing the Union's demand that Respondent bargain

11 The expired contract established a two-step grievance procedure for matters concerning ". . . the interpretation or application of the terms of the Agreement . . . . "If such remained unresolved, the grievance could "be jointly submitted" to arbitration, with the parties sharing the costs of such on an equal basis.

with regard to *both* the decision to lay off any employees and the effects thereof. It is uncontroverted that since receipt of the latter letter, Respondent, while willing to bargain over the effects, has refused, and continues to refuse, to bargain over its decision to lay off the 10 affected employees.[12] Also, the Union has never requested to meet with Respondent to discuss the effets of the layoffs.

During cross-examination by counsel for Respondent, business agent Major was extensively questioned with regard to the meaning of Section 12(A) of the expired contract. Testifying that, upon assuming her position in 1979, she had no conversations with her superiors as to the meaning of the entire contract, in general, and the layoff procedure in particular, Major was asked whether Respondent had "the right to lay off employees without first bargaining about the decision to do so provided that it complied with the provisions of Section 12(A). She replied, "I think that that probably approximates my understanding that the Company does have the right to lay off employees under the provisions in the contract." She further admitted that seniority rights — and not prior bargaining — were the "primary concern" when she resubmitted the layoff grievances on September 24.

12 Arnold, who was the Santa Clara plant manager for approximately three and a half years, testified that during this period, there were two or three employee layoffs. While recalling that no more than five employees were involved on each occasion, Arnold could recall nothing more specific about each layoff, including the dates thereof, and Respondent offered no supporting documents. Further, while recalling that on each occasion the Union neither demanded that Respondent bargain or protested the fact of the layoff, Arnold offered no evidence that Respondent notified the Union prior to the layoffs or that the Union ever became aware of same.

Finally, she stated that the only qualifications to Respondent's right to lay off employees were ". . . the stipulations that exist in the contract as to how layoffs were to take place."

* * * *

2. Whether Respondent is Obligated to Process the Layoff Grievances Pursuant to the Contractual Grievance and Arbitration Procedure

Paragraphs 13(a) and 14(a) of the complaint together allege that Respondent acted in violation of Section 8(a)(1) and (5) of the Act by failing and refusing to process, pursuant to the terms of the expired collective-bargaining agreement, layoff grievances which were filed by the Union. Counsel for the General Counsel and counsel for the Union argue that the Board's decision in *American Sink Top & Cabinet Co., Inc.*, 242 NLRB 408, establishes that the grievance and arbitration provisions thereof survive the expiration of a collective-bargaining agreement and that, therefore, Respondent was obligated to process, through arbitration if necessary, the above-described layoff grievances. Respondent, while not disputing the meaning of *American Sink Top*, argues that the Board's decision was an unwarranted extension of the decision of the Supreme Court in *Nolde Brothers, Inc. v. Local No. 358, Bakery & Confectionery Workers Union, AFL-CIO*, 430 U.S. 243 (1977), and that the instant case is factually distinguishable from *American Sink Top*.[13]

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13 At the hearing, counsel for Respondent asserted that subsequent to the expiration of a contract which contains a formalized grievance procedure, an employer need not process grievances pursuant to said

(continued)

It is uncontroverted that Section 21 of the parties' expired collective-bargaining agreement sets forth a grievance and arbitration procedure for the resolution of disputes involving the interpretation or application of said contract; that the Union filed grievances on behalf of each of the laid-off employees; and that Respondent refused to process these pursuant to the aforementioned contractual provisions. The Board has long held that the grievance procedure of a collective-bargaining agreement survives the expiration thereof and is a term and condition of employment. *Martinsburg Concrete Products Co.*, 248 NLRB 1352; *Newspaper Printing Corporation*, 221 NLRB 811. Further, any unilateral changes with regard to the processing of disputes would be violative of Section 8(a)(1) and (5) of the Act. As stated by the Board, "It seems clear to us that an employer may not unilaterally attempt to impose new channels for resolution of disputes without undercutting the Union's representative status." *The Hilton-Davis Company, Division of Sterling Drug, Inc.*, 185 NLRB 241, 243. Accordingly, Respondent's failure to accept and process the layoff grievances pursuant to the expired contractual grievance procedure constitutes a unilateral change within the meaning of Section 8(a)(1) and (5) of the Act. *Martinsburg Concrete Products, supra*, at n. 3.

Likewise, I believe that if said grievances remain unresolved prior to that stage, Respondent may not lawfully, upon request, refuse to submit them to arbitration.

(ftn. continued)
procedure. Rather, the employer merely has an obligation to bargain collectively about the grievances. It is with this as background that Respondent points out that the Union has never acted upon its attorney's invitation to arrange a meeting to engage in bargaining over the effects of the layoffs.

In this regard, I note that the Board had traditionally held that arbitration provisions, unlike a grievance procedure, do not survive the expiration of a collective-bargaining agreement, reasoning that arbitration represented an employer's "consensual surrender" of economic power during the lifetime of an agreement — which power each contracting party is free to utilize after expiration of the contract, absent mutual consent. *Hilton-Davis, supra* at 242. However, outside the ambit of the Act and within the context of a civil suit to compel arbitration, the Supreme Court considered this identical issue. In *Nolde Brothers, supra,* a contractual dispute arose after the parties' contract had expired. The Court concluded that "... nothing in the arbitration clause expressly excludes from its operation a dispute which arises under the contract, but which is based upon events that occur after its termination," and that there existed no evidence that the parties had intended a contrary result. *Nolde Brothers, supra* at 249, 253. Accordingly, the employer was ordered to arbitrate the dispute. In *American Sink Top, supra,*[14] the Board adopted the rationale of the Supreme Court, delineating and defining an employer's obligation to arbitrate, after the expiration of a contract, within the meaning of the Act. Therein, a contract expired, and approximately three months later, the employer refused to process an employee grievance based upon the expired agreement. As herein involved, said contract provided for arbitration of unresolved grievances. The Board reasoned, "The grievance's basis is 'arguably' — at least — the contract, and there is no

[14] Contrary to counsel for the Union, rather than expressly overruling *Hilton-Davis,* the Board merely adopted the *Nolde Brothers* rationale but without disavowing its prior reasoning. However, such does not detract from my finding that *Hilton-Davis* no longer represents the rationale of the Board on this point.

reason to conclude that the parties had intended the arbitration provisions to end with the contract's term." *American Sink Top, supra.* Accordingly, the Board required that the employer therein not only process the grievance but also arbitrate the matter, if necessary.[15]

Respondent argues that the wording of the expired collective-bargaining agreement herein establishes that the parties did intend the grievance and arbitration provision to end with the contract's term. Counsel points to the following language on the first page of that agreement, "WITNESSETH: That the above parties do mutually agree that the stipulations set forth shall be in effect for the time hereinafter specified," and asserts that such must be accorded recognition as the intent of both Respondent and the Union. I do not agree. Initially, there is no language within the grievance and arbitration provision (Section 21) of the expired contract which limits the effectiveness thereof to the explicit term of the contract. Next, it is gainsaid that upon the effective date of the agreement, the provisions thereof, with certain exceptions, became the covered employees' terms and conditions of employment. As such, these survived the expiration of the agreement, and Respondent could not unilaterally lawfully modify or eliminate said terms and conditions without first notifying and giving the Union an opportunity to bargain. *N.L.R.B. v. Benne Katz, etc. d/b/a Williamsburg Steel Products Co.,* 369 U.S. 736 (1962). Carrying Respondent's utilization of the above-quoted language to its logical extreme would permit Respondent to modify or eliminate *any* term or condition

[15] Whether *American Sink Top* is an unwarranted interpretation of *Nolde Brothers* is an issue upon which I do not pass. Thus, I believe the former represents the Board's view of the latter's viability, and I am bound by that.

of employment which is incorporated in the expired agreement — a position wholly inconsistent with Section 8(a)(1) and (5) of the Act and one which I do not believe Respondent seriously advocates. Bearing the foregoing in mind, thre is no record evidence as to exactly what the parties intended by the quoted language, much less that such specifically included the grievance and arbitration procedure. Rather, as the Supreme Court in *Nolde Brothers* emphasized, the mere existence of an arbitration provision demonstrates that ". . . the parties clearly expressed their preference for an arbital . . . interpretation of their [contractual obligations] . . . the alternative remedy of a lawsuit is the very remedy the arbitration clause was designed to avoid." *Nolde Brothers, supra* at 253-254. Accordingly, based upon the record as a whole, I do not believe that the parties intended that the arbitration provision would end when the contract expired, and I find that by refusing to arbitrate unresolved grievances, Respondent acted, and continues to act in violation of Section 8(a)(1) and (5) of the Act. *American Sink Top, supra.*

NATIONAL LABOR RELATIONS BOARD
Case No. 32-CA-3160

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
Washington, D.C. 20570

[Logo omitted in printing] August 6, 1990

Re: Litton Financial Printing Division, A Division of Litton Business Systems, Inc. 32-CA-3160

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Dear Counsels:

This is to advise you that the Board has decided to accept the remand from the Court of Appeals in the above proceeding and that all parties, should they so wish, may file statements of position with respect to the issues raised by the remand. Such statements of position must conform to Section 102.46(j) of the Board Rules and Regulations must be received by the Board in Washington, D.C. on or before August 20, 1990. Thereafter, of course, the Board will take whatever action is consistent with the Court's remand.

Sincerely,
/s/ Enid W. Weber
Enid W. Weber
Associate Executive Secretary